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*Seal of the Court of Vice Admiralty
of the Province of New York*

New York (Colony) Court of Vice Admiralty.

REPORTS OF CASES

IN THE VICE ADMIRALTY OF THE PROVINCE
OF NEW YORK

AND

IN THE COURT OF ADMIRALTY OF THE
STATE OF NEW YORK

1715-1788

WITH AN HISTORICAL INTRODUCTION AND APPENDIX

EDITED BY

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TO

CERTAIN OF MY BRETHREN OF THE BAR

who kindly said that these reports were worthy of print:

THE CLERKS OF COURT

who long and piously preserved the old records:

MISS CAROLINE CALDICOTT HELM

who faithfully prepared them for printing:

TO THEM AND EACH OF THEM

whose generous aid made my work a pleasure:

THIS BOOK IS DEDICATED

297028

PREFACE

THE ORIGIN AND ARRANGEMENT OF THIS BOOK WITH SOME EXPLANATION OF ABBREVIATIONS

THE publication of these reports is wholly due to the bar of New York City; even the handling and reading of the old papers from which they were compiled became possible because the bar provided the means for re-conditioning and preserving the more important documents in ways suggested by Mr. Victor H. Paltsits of the New York Public Library.

The firm names of those who saved many of the old papers from passing into dust, and all from further injury are gratefully recorded in the rebound minutes of the Vice Admiralty, and are again set forth below.¹

The reading and arrangement of cases was completed a few weeks before this country entered the World War. Thereafter for a long time we all had many things to absorb thought, labor and money, of greater importance than the doings of our legal ancestors. Lately, however, some of the bar have been moved to procure publication, and to the Committee of gentlemen named below² is due this volume,—which is not an

¹ Barry, Wainwright, Thacher & Symmers; Burlingham, Montgomery & Beecher; Butler, Wyckoff & Campbell; Cadwalader, Wickersham & Taft; Carter, Ledyard & Milburn; Choate, Larocque & Mitchell; Everett, Clarke & Benedict; Herbert Green; Haight, Sanford & Smith; Kirlin, Woolsey & Hickox; Kneeland, Harison & Hewitt; McFarland, Taylor & Costello; Park & Mattison; Wetmore & Jenner; Van Iderstine, Duncan & Barker.

² Winthrop W. Aldrich, Eldon Bisbee, Charles C. Burlingham, James Byrne, William N. Cohen, William Nelson Cromwell, Lewis L. Delafield, D. Roger Englar, Charles S. Haight, Morris J. Hirsch, Allan McCulloh, Nathan L. Miller, Robert C. Morris (Chairman), DeLancey Nicoll, James A. O'Gorman, Wilson M. Powell, Abram J.

historical work, though it contains some material for an historian—it is only another law book.

Yet this must excuse its being, for though new in one sense, in another it is the oldest law book in North America. There are to be sure older volumes of statutes, but our first reports were published in 1789 and the cases here reported end before that year.

It is a local affair, for every reported case was decided on Manhattan Island; yet to those interested in maritime law it is a matter of more than local pride because of the influence exerted by New York on the development of American Admiralty.

It is intended to be in strict form a book of “Reports of Cases”; only the syllabi and statements of fact are modern—everything else is copied from file papers or minutes.

Dates, however, have been uniformly given in “new stile”; thus, February 1, 1738-9 becomes February 1, 1739.

Ships’ names are given as written, and therefore sometimes vary in the same document. No one seems to have cared for accuracy in such a matter; thus *The Royal Hester* and *The Royal Esther* signify the same vessel; as also do *The Sea Horse*, and *Le Cheval Marine* (*sic*).

Proper names, as far as possible, have been written as spelled by the persons named.

Titles of cases are as written in the minutes, except in a few cases where the ship’s name or the phrase “*In re*” has been used, because the matter reported either bore no title in the minutes or was a litigation for which no contemporary description could be discovered.

Rose, James R. Sheffield, Henry L. Stimson, Charles Strauss, Henry W. Taft, Allen Wardwell, George W. Wickersham, Henry A. Wise, John M. Woolsey.

The opposition of parties has been indicated according to the minutes; *cont.* is invariable in the earliest entries; *ag^t* was the rule until about 1758; after that *vs* became customary.

Wherever money is mentioned New York currency is meant unless otherwise specifically stated. During the period covered the provincial pound was always worth very nearly \$2.50.

The following abbreviations have been used in referring to books:

BENEDICT: *The American Admiralty, its Jurisdiction and Practice*, by Erastus C. Benedict, LL.D., 4th ed., Albany, 1910.

BENCH AND BAR: *History of Bench and Bar of New York*, 2 vols., 1897 (Redfield's article, I, 89).

BETTS: *A Summary of Practice in Instance, Revenue and Prize Causes in the Admiralty Courts of the United States for the Southern District of New York*, by Samuel R. Betts, New York, 1838.

BROWN: *Compendious View of the Civil Law and of the Law of the Admiralty*, 2 vols., New York, 1840; from 2d London ed.

CHALMERS: *Opinions of Eminent Lawyers on Various Points of English Jurisprudence, &c.*, by George Chalmers, Esq., 1st American ed., Burlington, 1858.

CHANNING: *History of the United States*, II, by Edward Channing, New York, 1908.

CHESTER: *Legal and Judicial History of New York*, by Alden Chester, 3 vols., New York, 1911.

CIVIL LIST: *The Civil List of New York*. Compiled under the direction of the Secretary of State, Albany, 1887.

FLINT: *Early Long Island*, by Martha Bockéé Flint, New York, 1896.

GREAT AMERICAN LAWYERS: Edited by William Draper Lewis, 8 vols., Philadelphia, 1907. (Article by William Henry Loyd, Esq., on "Andrew Hamilton," in vol. I.)

HALL: *The Practice and Jurisdiction of the Court of Admiralty*, by John E. Hall, Baltimore, 1809.

MARRIOTT: *Formulary*, London, 1802.

MARSDEN: *Reports of Cases Determined in the High Court of Admiralty, &c.*, edited by Reginald G. Marsden, London, 1885.

PELLEW: *Life of John Jay* (American Statesmen Series), Boston, 1890.

SCOTT: *The Courts of the State of New York; their History, Development and Jurisdiction*, by Henry W. Scott, New York, 1909.

SMITH: *History of New York*, by William Smith. Published under direction of the New York Historical Society, 2 vols., 1829.

STOKES: *The Iconography of Manhattan Island*, 4 vols., by I. N. Phelps Stokes, New York, 1915.

WILSON: *Memorial History of the City of New York*, by J. G. Wilson, ed., 4 vols., New York, 1892-3.

For assistance in securing photographs of the portraits presented in this volume we are indebted to Mrs. Lewis Gouverneur Morris of New York City.

INTRODUCTION

THE contents of this volume are drawn from records which have lain upon the files of the United States District Court in New York City since its organization in 1789. Such is the tradition of the Court, and seventy years ago Judge Betts¹ wrote that in the preparation of his book on practice he had consulted "the archives of the Admiralty of this District for more than seventy years and up to the Revolution." The tradition is fortified by the arrangement and labelling of the papers themselves, and is consonant with known occurrences in other jurisdictions, for all that search has hitherto revealed of Vice Admiralty remnants rests on the files of some court.²

So far as I have discovered, it is in New York alone that any documents exist other than minutes; nor was it the habit in other jurisdictions to enter therein at length what are nowadays called Opinions. The "Sentence and decree" of the New York Judges was, however, so frequently more than a formal statement of result, that in many causes where the minutes alone survive the facts litigated are plainly stated or easily inferable.

The records in New York consist of minute books of the Vice Admiralty from 1715 to 1774, process, pleadings, motion papers, evidence and exhibits, almost none of which antedate 1757; and papers of a similar nature from the Court of Admiralty of the State of New York covering 1784-1788, but no minute book, a volume for which prolonged search in many quarters has been fruitless. The minutes are incomplete, there being an unexplained hiatus extending from 1716 to 1723, and another of a year beginning in July, 1757; the last undoubtedly due to the loss of one original volume, and greatly to be regretted, as the Court was then at the height of its prize business. After 1762 the "rough minutes" only remain, containing at times such entries as "The Judge delivered his sentence, *prout* same on file,"—when unfortunately that particular file

¹ United States District Judge in New York City, 1826-1867.

² Appendix, Note A.

has disappeared. In November, 1774, the last page of a "rough minute" book was filled. Undoubtedly another was opened, but its fate is unknown. Only a few pages could have been used before the Court adjourned for the last time. The latest pleading is a libel of February, 1775, and the last known official act of the Vice Admiralty Judge was to tax a bill of costs on March 29, 1775.¹

The State Admiralty papers evidence a business of about an hundred cases, fully one-half of them Customs seizures, and rarely contested. The brevity of this list is quite equalled by the quantity and kind of business in the earlier and latest years of the Vice Admiralty, which by modern standards was only fairly busy in time of war, when during six months beginning July, 1758, fifty cases in Prize and eight other matters were begun, or tried, or both. This was high tide, and before 1745 and after 1764 it was rarely necessary to hold Court for the transaction of admiralty business more than once a month, and twenty-five causes a year is a fair estimate of average business.

The preparation of these reports is a development from the wish to preserve from further decay the oldest papers possessed by the Courts with which I have been long concerned either as proctor or Judge. They had rested in dusty and oftentimes overheated rooms, for the most part creased and in bundles, labelled in the handwriting of Isaac Van Vleck, Deputy Register of the State Court of Admiralty, until in many cases handling had become impossible without risk of destruction. By the generosity of some score of the bar of the Court, the minute books and many of the file papers have been

¹ Among the Prize Papers of the High Court of Admiralty, now in the Public Record Office, London, are many papers from the Court of Vice Admiralty, New York, labelled "Sent from New York." They cover the years 1775-1783. Other similar papers will be found in certain bundles of the series Admiralty Court, Prize Papers. Many records of proceedings in Vice Admiralty Courts in the colonies may be found in the same repository among the Admiralty Papers and those of the Colonial Office. See Andrews, *Guide to the Materials for American History to 1783 in the Public Record Office of Great Britain*, II, 329-331.

repaired and made readable; and having read them all, they appear to me of some importance, and more interest.

Lord Stowell's objection to the reporting of Admiralty causes, his "fear lest the report should exhibit the nakedness of the land," has long been without foundation; and now that maritime litigations vie in number with those arising in many other departments of jurisprudence, it seems worth while to preserve in more available form than the originals can ever be, the acts and opinions of men who, in a day of small things, were (as I have come to believe) laying the foundations of most procedure and much substance of the American Admiralty.

The practice and procedure are easily understood by supplementing the minutes with the file papers; this done, the Court entries antedating surviving documents, prepared by counsel, become far more intelligible. Until this labor was undertaken, I never comprehended how large a fraction of any Court work is the bar's share thereof.

When the records begin it is plain that neither bar nor bench was doing more than using with commendable freedom what they knew of general law, wholly untrammelled by any traditions of Admiralty as pursued in England. I am convinced that they were completely ignorant of the habits of the High Court. In matters of procedure this is continually evidenced by the use or misuse of technical words. "Plaintiff" was common until near the middle of the century; "defendant" remained in use to the end, and no instance of the word "respondent" is found. "Claimant" appeared in 1760, but both before and after "reclaimant" was the more usual word and was commonly dropped when answer filed, "defendant" being preferred. "Pleas" and "demurrers" were common. The rule of court speaks of "exceptions," but that word cannot otherwise be found in the minutes; special demurrers were preferred. The replications and rejoinders used well into the nineteenth century and in the United States Courts were nearly always formal papers following the equity form. There is no trace of even an endeavor to use such words as "porrect," "relaxation," "impugnant," or even "nullity" and "subtraction," without a knowledge of which the British

Admiralty practice of the eighteenth century cannot be understood.¹ Nor is there any evidence that at any time the Vice Admiralty practitioners used the forms or phrases by which issue was joined *coram judice* in the High Court.

In fact if such modern reforms (not procedural for the most part) as taking evidence in open court and in the presence of counsel, regarding persons interested as competent witnesses, suppressing arrest or imprisonment for debt, and putting funds in the Court's custody on deposit in a chartered bank, rather than with a private merchant favored by the Judge, be borne in mind, it is proven by these records, and I hope shown by the cases excerpted therefrom, that a simple American Admiralty practice had been developed in New York at least as early as 1760. Nearly as much was recognized by counsel on appeal in *Brown vs The New York*,² the only appeal on the instance side anywhere reported, and probably the only one ever perfected from the New York Vice Admiralty.

The practice in all cases except Prize may be thus outlined: In the earliest causes process issued as at common law without pleading or security; but the respondent was always entitled (except as against the King suing for himself) to exact stipulation for costs before answer, on penalty of dismissal. In point of fact stipulations were usually given *in limine*, and the practice became a rule of court in 1749. Process was drawn to meet the requirements of each case, and by the Deputy Register, though from 1745 there survives one writ (the equivalent of a *capias*) that is a printed form. Generally speaking there was no settled sequence of words, in any procedural writing; though a tendency to harden into customary phrases is observable. This remained true in the United States District Court until about 1810, when set and printed forms of process came into use. Whatever the mesne process, the document was commonly known as an Admiralty

¹ See for instance *Brown*, II, 396, or any of the forms in Marriott. Cf. Hall, the earliest American text writer on Admiralty, who borrowed forms from New York.

² Marsden, p. 30.

warrant, sometimes as a precept, although by about 1760 the word "monition" comes to mean process *in rem*. Libels and all other pleadings were filed in open court except by special allocatur usually given at the Judge's residence. Notice of seizure of the *res* was at first given most informally, if at all; but by the date of the earliest file papers (1757) the Marshal was placing notices of his action on the Exchange, and in several "publick places," using a form of notice which is substantially that of today. Proclamation in the words now current was made on filing libel, and thereafter twice repeated on separate days. After three proclamations default was final; the fourth proclamation was equivalent to a default decree. There was no stated interval between proclamation dates, nor between pleadings; it was customary to take a rule requiring the next pleading on a day certain, or the next day of jurisdiction. No libel or answer is found that is not modern in substance, and in form as well, except for some phrases whose singularity is literary rather than legal. To conclude a pleading to new matter with an *absque hoc* was invariable, and so continued in the United States Courts until well into the nineteenth century; indeed I have known one pleader who always did it. An "answer and claim" constituted a single document, though a person was usually "admitted to claim" in open Court and then given time to answer. The modern claim by separate instrument filed in the court office, is the obvious equivalent to an appearance to claim in open court on a proclamation day. Where several parties respondent or claimant appeared by different proctors they pleaded between themselves in addition to responding to the allegations of the libel. This, owing to the system of costs, greatly multiplied expense and was at times avoided by an "agreed state of facts," a device sufficiently frequent to evidence (if there were no other proof) a bar of assured position, respected and respecting one another. Stipulations for all purposes were given in open court, and evidenced only by the minutes, until about the middle of the century. By 1760 substantially the form of words still in use was signed by the stipulators, acknowledged before the Judge, Register, or Deputy, and filed. At about the same time "bonds to the Marshal" in quite modern form and

substantially the equivalent of those now and long authorized by act of Congress became and remained not unusual.

The duty of administering oaths and taking acknowledgments lay theoretically upon the Judge, but the Register and his Deputy could act "*absente judice*" and usually did; though Judge Richard Morris had the curious habit of swearing witnesses wherever he might happen to be, and sending a note to the deputy stating what he had done; whereupon the witness's examination is stated to have been taken "by" a deputy, but not "*absente judice*."

Interlocutory orders, such as those for examination of going witnesses, and sale of perishable property, were invariably entered in the minutes as though the Judge were sitting in Court. The file papers show that such matters were frequently directed by the Judge at his home, and upon affidavits which in respect of perishable property were both informal and unconvincing. This practice was but part of a larger truth. The order or decree, final or otherwise, was the entry in the minutes, and the evidence of any judicial action was an extract from the same. This was common law as well as admiralty practice, but when such extract from the minutes was garnished with a description of the Court, its place of sitting and a statement of the presence of the Judge (naming him), we have the form of order now commonly used by all Courts, State and Federal, sitting in New York, and the effect of local practice upon Admiralty procedure is clearly seen.

Executions were drawn with the same variances of language as were warrants, but followed closely the *fi. fa.* which Congress has long made statutory. No instance of a *levari* or *vend. ex.* is found. The latter was unnecessary, because sales of the *res* were in pursuance of orders, entered upon the minutes, and conducted under the direction of persons named by the Court, at times an important piece of patronage. These agents were from time to time ordered to bring into Court an account of sales. No special return day seems to have been set by rule of court or otherwise. This practice made trouble at times, but there was no bank in the Province to put the money in.

Appeals were by notice in the form still used, in all courts,

State and Federal, sitting in New York. It was filed with the Register, "allowed" in open Court, nor was the allowance a mere formality, if for example the Court thought the notice too late, or to a wrong appellate tribunal. The effect of refusing appeal was to prevent making up the apostles, which had to be prepared by the Register and certified by him under seal. Draft apostles were submitted to counsel, who sometimes debated as to what was proper for insertion, the matter being apparently resolved in the modern way, by putting in everything. The court *ad quem* in appeals was obviously a matter of doubt to the bar, except in prize. On that side of the Court, the "Commissioners Appointed for Hearing &c. Appeals in Prize Causes" had undoubted and sole jurisdiction. They were always selected members of the Privy Council. On the instance side, appeals were attempted (as the minute books show) both to the Privy Council and the High Court; but the latter Court heard and decided the only case (*Brown vs New York*) in which an instance appeal was certainly perfected. Every appeal, upon the giving of satisfactory stipulations, entitled the appellant to a stay of eight months, usually extended to twelve; and the evidence is overwhelming that appeals were noticed mostly for delay—no apostles were ever procured, and no papers of any sort lodged in England.

On reversal of decree proceedings were varied. Stipulators were usually ordered to pay in the modern manner, but new libels against the stipulators were in some instances filed. For this procedure no reason can be seen except a desire to multiply costs.

As to costs the practice was wholly unlike anything now known in admiralty; it was substantially the system then prevailing in the common law courts of the Province and interesting as illustrating the origin of the cost system of New York now long established by statute. Every step in every cause had its price, irrespective of its importance, with the result that a proctor's bill of costs represented his entire recoverable professional reward. Costs were taxed as between counsel and client, and the latter was responsible to his own proctor and advocate if the party defeated could not be made to pay the bills of both sides. It apparently lay with the Court

to decide whether in any given instance bills were taxable by both proctor and advocate. Such taxation was generally allowed, but I have been unable to ascertain where lay the line of demarcation. This method encouraged prolixity and delay; yet the fees were not large in large cases. It obviously made them relatively great in trifling matters. In *The Dolphin and Seapost* the two vessels and their cargoes sold for £41,959; when both appeals were successful, new libels were filed to recover such amounts as had not been voluntarily paid by the stipulators. This rendered necessary a sworn statement of the entire cost of proctors and advocates on the original trials; it was £646. But an uncontested salvage of £63 resulted in taxed costs of £23. If costs were not paid, attachments issued as matter of course.

Warrants of attachment were used as mesne process with great freedom. The phrase "foreign attachment" is not found; but the thing was well known. The practice of the State Court of Admiralty varied not at all from that of the Vice Admiralty.

The relationship between the procedure I have tried to describe, and that of the District Courts of the United States now sitting in New York is too obvious to need comment; it is of direct descent, with the family resemblances most strongly marked; a fact commented on in the preface to Betts more than two generations ago.

So far as the substantive law of the Court is concerned the professional reader must judge for himself from the decisions; to me it seems that this collection substantiates the celebrated remark of Justice Story that "in point of fact the Vice Admiralty Court of Massachusetts before the Revolution exercised a jurisdiction far more extensive than that of the Admiralty in England,"¹ for there could have been little difference between the daily work of the Boston and New York Courts, though Boston probably had then the heavier calendars. By "extensive" was meant diversified, and when comparison is made between what the following pages show as having been done in New York and what Marsden exhibits as the habitual

¹ *DeLovio vs Boit*, 2 Gall., at 471.

business of the High Court in the eighteenth century, Story's dictum receives firmer support than the tradition he repeated.

I find the inference irresistible that some of the Vice Admiralty business rested (so to speak) on the professional limitations of both bench and bar. If they knew much of the historic quarrel between Admiralty and Common Law they either concealed it, or did not seek to limit jurisdiction except as politics demanded. The only book on maritime law to which any now discoverable reference was ever made was Malloy, and that very seldom. There is no instance of objection made to the enforcement *in rem* of a demand for money loaned, or for ship's necessities; and "necessaries" seems to have been most generously construed. There is no evidence of restricting jurisdiction *in rem* in respect of the place of seizure. Vessels were repeatedly arrested in New London and Amboy and brought to New York for trial. Jurisdiction *in personam* was never contested, except on the obvious ground that the contract was made on land and (in effect) did not relate to maritime affairs. Bonds to the Marshal were enforced in the Admiralty *nem. con.*, although the surviving bonds show no specific submission to the jurisdiction.

The maritime lien was practically enforced quite as thoroughly as any modern Court could ask; but no discussion is found regarding its extent or applicability in any case; and the difference between the *jus in re* and the *jus ad rem* cannot be ascertained in the remaining records. Attachments against residents were used, where we would proceed *in rem*, and in matters of salvage bench and bar groped their way, and made their own law; but steadily advanced.

There is no evidence of an endeavor to prohibit the Vice Admiralty by any Court of Law or Equity sitting in the Province. One prohibition was evidently applied for in England and denied, and once stipulators in admiralty were released by two Justices of the Colonial Supreme Court, to the great wrath of Morris, J., who compelled them to pay within a few days, but whether he rearrested them I cannot be sure.

It is a fair claim that a Court which exercised so comparatively varied a jurisprudence, without any visible hostility from the common law courts, and did it in a city of growing

commercial importance, was laying the foundation for an admiralty jurisdiction enlarged and vigorous, as compared with that to which the High Court of Admiralty in the eighteenth century meekly submitted.

The continuity of procedural law affecting revenue and navigation is a matter never before so fully illustrated as is done by these cases. Not only has the United States, from the beginning, punished smuggling and unlawful management of vessels by seizure and condemnation of *res* after the course and practice of admiralty, but the State of New York, and earlier the Crown in the Province of New York regularly did the same thing in the same way as far back as 1715. This jurisdiction, originally created and conferred by the British Laws of Trade, is the one matter that has directed the attention of historians to the provincial admiralty; they have dwelt freely upon the unpopularity of these courts in the Colonies, and given the lay reader the impression that what the Court habitually did was righteously snuffed out by the Revolution. The latest, and a very good example of this treatment of the subject is Channing,¹ a writer who seems unacquainted with the difference between an Admiralty Court and a Commission for the Trial of Piracies, etc.

So far as the substance of the trade acts was concerned, it is of course true that they were unpopular, but in New York certainly the statutes were interpreted very narrowly against the Crown;² yet the procedure became a part of the business life of the community; for as soon as the State of New York made its own customs laws, the State Admiralty, following the same procedure that historians confound with substantive law, enforced the laws of home manufacture in exactly the same way as the Crown had enforced the Acts of Parliament; and when the regulation of shipping and foreign commerce was conferred upon the United States, it followed, and still does follow exactly the same procedure, changed only in details so simple that any lawyer who knows modern govern-

¹ II, 276 *et seq.*

² Especially *Spencer vs Richardson*; *Kennedy vs 32 Barrels*.

ment practice in Customs' informations, can follow the *quiam* actions of the earliest date hereinafter reported.

Therefore I have made this book, in the attempt to show that the Vice Admiralty of New York largely created its own practice; and that that practice has widely passed on to all the Courts of the United States, because New York as the principal maritime city has influenced the rest of the country. Further, to illustrate the freedom and inclination to novelty, displayed by a small but vigorous bar, who knew little of the English Admiralty of the time, and *therefore* produced beneficial results through the United States Courts, which took up the work in the same spirit. And, lastly, to show that admiralty methods were not obnoxious to the revolting colonists, inasmuch as they continued those methods for their own purposes, however much they disapproved of the substantive law which admiralty had enforced prior to 1776.

The Prize causes take up much space in this collection, and seem of interest historically, as casting light upon the habits of a commercial community, typically American in that it was already quite cosmopolitan. After reading through the evidence, the remark of Captain Bourgeois, a French naval officer who visited New York shortly after the Revolution, seems apt. He wrote of the city that the "inhabitants engage in contraband trade with marvellous skill." The cases also illustrate the vagaries of legal decision, before contraband and blockade could be called terms of art among English lawyers, and before Stowell's abilities were devoted to the subject. There is certainly no such collection of prize cases antedating Stowell in print.

If these claims for the records that have so interested me can be made out, such justification must be found in the character of the Judges and their bar. The men whose names figure in the reported cases are without any exception known in local history, if they do not cut some figure in national affairs.

The earliest Judge whose rulings are recorded (Lewis Morris, 1715-1721) held no Royal Commission, but exercised admiralty functions under his designation as Chief Justice of

the Province. On March 28, 1715, the Governor of the day (Hunter) wrote to the Board of Trade "Mr. Mompesson our Chief Justice is dead. I have commissioned Lewis Morris, Esqr in his room for these reasons amongst others: that he is a seneible honest man and able to live without a salary, which they will most certainly never grant to any in that station, at least sufficient to maintain his clerk." The Register of Provincial Commissions perished in the fire which destroyed the New York State Library in 1911. In the published extracts therefrom¹ known to me Morris's name does not appear as Admiralty Judge, yet he undoubtedly acted until Francis Harrison was appointed by royal warrant in 1721.

Concerning the repute and characteristics not only of this Morris but of many members of the bar, Smith's *History* is nearly contemporary authority. William Smith, Jr., whose name figures so largely as counsel in subsequent pages, was the author. He adhered to the Crown, and died in 1793 as Chief Justice of Upper Canada. His father, the William Smith of this collection, had practiced almost from the time when Lewis Morris became the first native-born Chief Justice. The Smiths of course had all the gossip of the bar at their tongues' end, and the historian says of this earliest admiralty Judge, "though he was indolent in the management of his private affairs, yet through the love of power he was always busy in matters of political nature, and no man in the Colony equalled him in the knowledge of the law and the arts of intrigue." He has left no considered judicial opinions, except his dissent as Chief Justice in *Cosby vs Van Dam*; but Chalmers (p. 249) preserves an opinion of his, rendered *circa* 1720, on the question whether a change of Governor worked a dissolution of the Provincial Assembly, as a demise of the Crown dissolved Parliament, and it is a lawyer-like piece of work; while his pamphleteering in respect of the historic Van Dam and Zenger matters goes far to prove the acuteness of Smith's estimate of his character in respect of political activities.²

¹ *Civil List: Bench and Bar*, I, article by A. G. Redfield.

² See *Great American Lawyers*, I, article "Andrew Hamilton," for some account of Morris and others who practiced much in Admiralty.

Francis Harison (1721-1735) was commissioned under the High Court by royal authority. He is the same man who figures as libellant and informant under Judge Morris. Much engaged in politics, a holder of many offices and concerned in some very obscure mercantile and speculative transactions, he fell into such public disfavor that (as Smith puts it) he privately removed to England in 1735. From the minutes it is evident that he did nothing to wind up the affairs of his Court before he left. Either he or his son or both returned to New York, and the family has long been well known at the bar. A grandson was the first United States Attorney in New York.

After Harison's departure Daniel Horsmanden (1736-1738) acted as Judge in Admiralty, being at the time a Justice of the Supreme Court of the Province. He likewise had no commission from England, and did nothing but open Court and grant adjournments. No rulings or opinions by him are found justifying report. He was, however, a man of considerable force, one of the best known Crown lawyers in the Province, and very useful to Chief Justice DeLancey;—who, as Smith declares, was an ill-read man, so Horsmanden frequently "held the pen" of DeLancey. He died as Chief Justice in 1778.

Lewis Morris, Jr. (1738-1762), whose labors form the major portion of this collection, was the son of the first Lewis, and evidently found in the Admiralty Court one of his principal pleasures. His opinions show the man, and fully respond to the tales of rugged eccentricity with which local histories abound. He lived at Morrisania, and often held Court there, especially in later years of ill health. One of the items in bills of costs of the period is for attendance (rated as high as £5) at this remote place; and the cost of a chaise figures as a disbursement. His rising wrath against the Dutch for aiding in the carriage of French goods during the Seven Years' War, and the resultant law is not unworthy of historical notice. He died in office, and held Court at his home to within a few weeks of his decease.

Richard Morris (1762-1775), the son of Lewis, Jr., had been his father's deputy, and as such held Court in New Jersey

in the one New Jersey cause above referred to. His commission was from the same authority as his father's;¹ and both had jurisdiction over Connecticut and New Jersey as well as New York. Although Richard Morris had practiced assiduously before his father and elsewhere, he never had the love for legal labors manifested by Lewis Morris, Jr.; his opinions show it as well as his subsequent career. When New York created an Admiralty Court in 1776 he declined the judgeship, but later became Chief Justice of the State. Resigning in 1790 at the age of sixty (under the same rule that banished Chancellor Kent from the bench) he retired to his estate at Scarsdale in the family county of Westchester, and never practiced thereafter, though he lived in health for twenty years.²

Lewis Graham, the only Judge of the State Court of Admiralty, was a distant connection of the Morrises, and himself of a distinguished family in Westchester County. He never became a practicing lawyer in the City of New York, and died at a comparatively early age in 1793. There is no record of his having ever appeared in the Admiralty Court as a practitioner, and while his few remaining opinions show industry, he had little material to work upon, and probably felt himself a *locum tenens* waiting for national organization.

The Vice Admiralty Bar was compact; the records show that; for less than twenty-five men did eighty per cent of the work for fifty years (1739-1789); it was the earliest specialized bar in America, not because the practitioners did nothing else; on the contrary, Admiralty was in most cases the least of their activities, but the men who got and kept business at that bar were the best the Colony produced.

Foremost among proctors were William Smith and his two sons, William, Jr., and Thomas, the latter the only one of

¹ It is printed at length in Benedict, p. 76. That of Lewis Morris, Jr., was of the same tenor, and both were translations of the Latin commission to Harison.

² The history of the Morrises of Westchester is written in *Famous Families of New York*, by Margharita Arlina Hamm, II; and in various histories of Westchester County,—such as those by Shonard, Bolton, and Scharf.

Morris's bar who practiced in the State Court. He remained in New York with his relative William Smith Livingston. The senior Smith, as is plain from his cases, was a persistent, insistent fighter, who often lost his sense of proportion, but in book-learning was ahead of any man in the province except James Alexander.

Smith, Jr., the historian, was his father's pupil,—but evidently preferred to practice with other allies, as soon as he could stand alone. His references to the bar, have the tang of courthouse gossip. Joseph Murray was a "partisan of the Governor's," which means that he was a Tory, while all the Smiths were Whigs.

Benjamin Nicoll and Murray did more than any other lawyers in the Colony toward the establishment of what is now Columbia University, and Murray left to the struggling College his large library. Alexander "was bred to the law, and though no speaker, at the head of his profession for sagacity and penetration." This was the general opinion, though Smith was a partial judge, for Alexander and Smith, Sr., had been temporarily disbarred together for opposing DeLancey and the Governor's party in the matter of Zenger.

Chambers was "more distinguished for a knack of haranguing a jury than for his erudition in the law," yet he became a Justice of the Supreme Court. Bickley was in Smith's opinion "rather remarkable for a voluble tongue than a penetrating head or much learning"; yet he was a most successful practitioner, and Attorney-General at the trial of McKemie, the only person ever prosecuted for unlawful preaching in the Colony, a *cause célèbre*, for years, and one in which Jamison was leading counsel for the defence.

Thomas Jones, Justice of the Supreme Court shortly before the Revolution, is the writer to whom succeeding generations have been indebted for the best picture of New York City during the Revolution, and other candid and able, if somewhat bitter, Loyalist writings. Samuel Jones was as a lawyer more successful; but sought not office. Neither did Benjamin Kissam, to whom John Jay was apprenticed at the law, and of whom some picture is given in Pellew's *Life of Jay*. He was known outside the profession as Secretary of "The Society

for Promoting Arts, Agriculture and Oeconomy," which gave prizes for bumper crops. On these records he stands out as a somewhat obstinate practitioner, and the only man who ever noticed an "appeal from a grievance" inflicted by Lewis Morris, Jr. As Kissam withdrew the appeal, evidently after he cooled off, the nature of the judicial outrage remains unknown.

John Morin Scott, the favorite "orator of the Liberty Boys," as Pellew describes him, Major-General, Secretary of State, Member of the Continental Congress,—was of another type. Still another were the Kempes, father and son, who occupied the Advocate Generaley for over twenty-five years. Rather stolid officeholders, and Vestrymen of Trinity, careful and laborious, as their very numerous remaining pleadings show, but below the private counsel they faced. Local history knows less of them than any of the rest, and even after an hundred and thirty years William Kempe's mismanagement of Y'Bannes case (*Haddon vs 10 Doubloons*) seems to me laboriously wrong-headed.

Whitehead Hicks became a Supreme Court Justice shortly before the Revolution, and died during the conflict, distrusted by both parties, because he would hate neither. His speech to the Sons of Liberty refusing to give up allegiance to the Crown because of personal gratitude for honors conferred and favors received,¹ has almost kept his name from oblivion, and deserves to succeed in so doing.

Duane, and all the Livingstons, are, like the Morrisises, almost national characters; they are certainly worthies of state-wide reputation. I know of no collection of cases, taken as they occurred without selection, where the average rank of counsel, in the community in which they lived, was as high as it deservedly was in respect of the men who so nearly did all the Admiralty business of New York before 1789. They were distinctly "eminent citizens," they knew very little of historic admiralty, but they were quite capable of devising methods of getting the business done, and did it. In my opinion we are in the main doing now what they found convenient.

It was a misfortune for the State Court, and for the new

¹ Flint, p. 380.

United States District Court, that death, politics and adherence to the Crown left almost none of the pre-revolutionary bar to appear before Judge Graham, who distinctly needed education.

But Duane retired from politics to become the first United States Judge, and made Edward Dunscomb, who had had some business in the State Admiralty, his Clerk. That they attempted nothing revolutionary, and adhered to traditions, our records most amply prove.

The position of Register, like all the Admiralty offices, furnished an income based on fees alone. The Register's takings certainly rose above (perhaps much above) £300 a year when Prize cases were frequent, and that was a salary for the Provincial Chief Justice. In peace he depended principally upon government seizures, where contests were few, and his earnings could hardly have averaged much over £100 annually. Yet the place was sufficiently sought after to induce Richard Nicholls, one of the most active practitioners of the time, to procure the appointment under the "Great Seal of the High Court of Admiralty." His commission was produced in Court July 9, 1746, and he served to the end, practicing also as a proctor until 1750, when, for no ascertainable reason, he disappears as counsel. Who preceded him the minutes do not show, and the last appointment evidenced by the lost colonial register is of one Robinson, in 1709. The matter, however, is not important, for the clerical work was done wholly by the Deputy Register, who was practically a trusted clerk. His name is discoverable from the file papers only. From 1757 to 1761 Peter Silvester acted, and after May of the last named year John McKesson was Deputy until the Court dissolved. McKesson was the only Register of the State Court of Admiralty, and from internal evidence it is to him that is due the preservation of the records.

Throughout the whole period of these reports the Court sat at the City Hall on Wall Street, the arrangements of which edifice are shown in Stokes.¹ The building contained no clerk's office or record room, and confirms the evidence of the papers

¹ I, 272, plate 32b.

themselves (or rather of some private notes found among them) that court officials (and perhaps others) kept their records at home or in private offices. This may account for the disappearance of papers antedating John McKesson, and encourages hope that among the papers of the Morris family (now widely scattered) there may remain some archives earlier than any yet discovered.

The only "Marshall and Serjeant at Mace" of the Court named in the minutes was Captain John Fred, whose commission was read at the same time as that of Lewis Morris, Jr. —May 19, 1739. He was no longer in office in 1757, when by the file papers Joseph Willson so acted and continued to make returns to process as "Marshall" (*simpliciter*) until 1769, when Thomas Ludlow, Jr., appears as "Provost Marshall," and so remained to the end.

The Admiralty oar which Willson so ineffectively displayed as the badge of his authority in *The Bon Rencontre* is still owned by Ludlow's descendants, although now deposited for safe-keeping with the New York Historical Society. Many other Vice Admiralty Courts possessed similar emblems, but I have been unable to discover that any others belonging to courts within what is now the United States remain in existence.¹ The ordinary use of the emblem was like that of a parliamentary mace. When the Court was in session it lay prominently on bench or desk before the Judge, and on adjournment was carried out with ceremony. The New York oar bears a hall-mark thought to indicate manufacture during the reign of George II; it was probably procured by Lewis Morris, Jr., when he took office. A facsimile was made for Judge Addison Brown (1881-1901) and is now in the possession of the United States District Court. The Marshal of the State Court of Admiralty was John Graham, whose connection with the Judge is obvious.

¹ The silver oar, emblem of the Admiralty Jurisdiction of Bermuda, which was given by Governor Bennet in 1701, still survives, and in 1920 was carried in procession on the celebration of the Tercentenary of the establishment of parliamentary institutions in that island.

Some of the foregoing statements of fact do not agree with results given by Chester, Scott and Wilson; they relate entirely to the personnel of the Court and dates of taking or leaving office, and are of no importance. It can only be said that what is here given is contained in records of unquestionable genuineness.

In preparing these notes of decisions it seemed an affectation to use words not now current in legal diction in matter written by myself; but in all quotations from the minutes, pleadings or evidence the wording, spelling and capitalization of the original have been preserved, as far as possible. Punctuation, however, has been supplied, as the original documents contain practically no punctuation at all.

I recognize that whatever a man finds interesting he comes to think of importance. Yet the history of legal development contained in these papers has appeared to me, and to some others, to be worthy of the attention of students.

CHARLES M. HOUGH.

*U. S. Court of Appeals,
New York City,
November, 1924.*

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REPORTS OF CASES

IN THE VICE-ADMIRALTY OF THE PROVINCE OF NEW YORK

At a Court of Admiralty held at the City Hall of the
City of New York

Present LEWIS MORRIS, Esq^r Judge

WILLIAM DAVIS QUI TAM &C. CONT ISAAC DAWSON

A defendant, though discharged without stipulation, pays fees.

Oct 7, 1715 Mr. George proctor for the defend^t moves that the defendant may be discharged without stipulations on the affidavits of Baruch Mapler John Kelley and William Wooton.

Ordered the Defend^t be discharged paying fees.

WILLIAM DAVIS QUI TAM &C. V ALLANE JARRETT

Upon the decease of an informer, his action is properly revived in the name of those jointly interested with him.

October 1, 1716. On motion of Mr. Jamison Deputy Advocate it is ordered that the said deputy Advocate be at Liberty to prosecute the Lybell formerly exhibited in the name of the said William Davis (since dec'd) in the name of Issabella Davis the widdow and administratrix of the said William Davis, and that all proceedings thereupon for the future be continued in the name of Issabella davis widdow and administratrix of the said William davis unless the said defend^t shall at the next court show good cause to the contrary.

October 2, 1716. Ordered that this prosecution be carried on at the suite of the King and the Governor

Ordered that the former Rule made in this cause for carrying on this Suite in the name of Issabella Davis widdow, Administratrix of the said Informer William Davis be discharged.

WILLIAM DAVIS QUI TAM &C CONT. SLOOP JOHN & WILLIAM, AND SEVENTY SIX BARRELLS
OF TURPENTINE

Defendant in a revenue cause gives security to pay costs if acquitted. Form and amount of stipulation.

Oct 22, 1715. Mr George one of the Proctors of this court, prays that Mr John Sloss may be admitted defendt to defend the seventy six Barrells of Turpentine in the Lybell mentioned, which is granted by the Court, he stipulating with security to pay costs if the said Seaventy Six barrels of Turpentine upon the hearing of this cause shall be acquitted, and thereupon

The said John Sloss and John MacClenan of the City of New York Vintner,

Stipulate in the sune of Twenty pounds Current Money of New York to pay such costs as shall be awarded by this Court in case the said Seaventy Six barrels of Turpentine upon the hearing of this cause shall be acquitted.

WILLIAM DAVIS QUI TAM &C VS SEAVENTY SIX
BARRELS OF TURPENTENE.

The personal representative of a deceased informer must surrender the bond taken from a claimant of the seized *res*.

(A rule having been taken for the revival of this action similar to that in Davis v Jarratt (*ante*):)

Oct. 2, 1716 Ordered that Capt Lancaster Symes, Collr Robert Lurting and Mr. John Graham doe Returne the appraisement by them made of the said



A.W. Elson & Co., Belmont, Mass.

Lewis Morris

1674-1746

CHIEF JUSTICE OF THE PROVINCE OF NEW YORK AND GOVERNOR OF NEW JERSEY.
ACTING JUDGE IN ADMIRALTY FROM THE DECEASE OF CHIEF JUSTICE MOMPESSEON
IN 1715 UNTIL THE APPOINTMENT OF JUDGE HARISON IN 1721
FROM THE PAINTING IN THE POSSESSION OF DR. LEWIS MORRIS, U.S.N., OF NEW
YORK CITY

Seaventy Six barrells of Turpentine into Court forthwith upon oath, and that Issabella davis the Widdow and administratrix of William Davis the late Informer in this cause doe deliver to the Register of this Court the Bond taken by the said William Davis from John Sloss & others to answer the vallue of the said appraisement.

FFRANCIS HARISON QUI TAM &C. CONT SLOOP HAPPY
MARY & HER CARGOE OF MERCHANDIZE, NICHOLAS
EVERTSON JR. DEFEND^T

The custody of a *res* regulated, when security not given. *Semble* amount of costs discretionary.

Oct. 18, 1716 On motion of Mr. Jamison Proctor for Informer, It is Ordered that the Informer have leave to take the Goods in the said Sloop on Shore and Lodge them in the Custom House and secure the said vessel within the Dock in Consideration of the uncertainty of the Weather, the defend^t not having stipulated for either Goods or Vessell.

Oct. 19, 1716 On motion of Mr George proctor for the defend^t It is Ordered that the Goods to be taken on Shore out of the said Sloop pursuant to the former order by the informer, be put into a secure Store House at the charge of the defend^t to be locked up with two Locks. The Key of one of which to be kept by the Informer, and the other key to be kept by the defend^t to prevent Imbezelement or waist of the said Goods.

Novbr 30, 1716 Upon a Lybell exhibited for not being duly Navigated, the Court gives Judgment that the said Sloop and Merchadize be discharged from the said Seizure upon payment of Costs. The Court will consider as to Costs.

WILLIAM NICHOLE QUI TAM &C. CONT SLOOP REBECCA,
& SOME PITCH & TARR

A vessel excused from condemnation, by reason of a permit to sail, irregularly granted by the Customs.

October 9, 1716. The officer of the Customs having in open court acquainted his honour that hee gave leave to the Master of the said Sloop to take in goods and goe to the Jerseys and returne untill such time as he cold obtaine a Register, His Excellency being in the Jerseys at the time the Master made application for a Register for the said Sloop, and it appearing that this was the first Returne the said Sloop made since that leave given to the Master, It is thereupon

Ordered, That the said Sloop and Merchandize (If not seized for any other Cause than for Want of a Register) Be discharged from the said seizure.

FFRANCIS HARISON QUI TAM &C. CONT THOMAS
DITCHFIELD

In an action for forfeiture, a defendant must give bail to the action, or remain in custody.

Nov^rbr 30, 1716. On an information of Fforfeiture of £100 ster^g, The defend^t being brought by process into this Court, Ordered that he be committed unless he stipulate to pay the said £100 ster^g if he shall be condemned upon the hearing of this cause.

FFRANCIS HARISON QUI TAM CONT PINKE GOOD
INTENT AND EUROPEAN GOODS.

Evidence may be taken *viva voce* on special motion. Whether a libel for wages may be filed after condemnation for a revenue violation, *quaere*.

Dec. 3, 1716 Upon a Lybell exhibitted for haveing Brandy and European Goods on board for which noe

Cockett, or reporting the same as the Laws direct; Mr. Jamison deputy advocate prays Robert Campbell may be sworn to be examined viva voce ex parte Inform^r, who was sworn.

Mr Bickley proctor for the defend^t prays Mr Samuel Bayard may be sworne and examined viva voce, who was sworne accordingly.

Dec. 8, 1716. Judgment that the said Pinke with the appurtenances and European goods be condemned according to the prayer of the Lybell, Sold divided in thirds after charges deducted.

Feb. 12, 1717. On motion of Mr Bickley Proctor, the Lybell for Marriner's Wages (contra Pinke Good Intent) was read and process prayed ag^{nst} the said Pinke.

The Court will consider whether process ought to Issue upon this Lybell against the said Pinke¹

At a Court of Admiralty &c Present the Hon^{ble} Francis Harison Esq^r Judge of the said Court.

JAMES ALEXANDER ADVOCATE-GENERAL, (ON BEHALF OF OUR LORD THE KING) AGST JOHN TICKLE

Stipulations are required from both parties, and a defendant against whom a penalty is decreed should be committed until payment, notwithstanding stipulation given.

May 12, 1724 Upon motion of the Advocate General Ordered that the defend^t stipulate in £100 to abide the decree of this Court. Ordered the proceedings in this Court to be stayed untill the plaintiff Stipulate for payment of Costs in case he shall not prosecute with effect.

Sept 2, 1724 The Court having considered the prem-

¹ No decision on this point is found. The minutes are wanting between February, 1717, and August, 1723.

ises & proceedings, and Evidence on both sides doth adjudge sentence and decree that the said defend^t John Tickle do pay a fine to Our Lord the King, the Sum of ten pounds Current money of the province of New York and that he be taken into custody of the Marshall of this court there to remain untill he pays the same with full ffees of prosecution.

Oct. 13, 1724 The Advocate Gen^l acquainted his Honour the Judge that he should not prosecute in this Court for the ffees due to him in this cause, but was ready to prosecute for any other of the officers of the Court if they required the same.

ARCHIBALD KENNEDY QUI TAM &C. AGNST SARAH
TAYLOR

The defendant in a revenue case pays costs, though libellant refuses to proceed.

Aug 6, 1724. Upon motion on behalf of the defend^t and upon the informants refusall to prosecute this suit, Ordered that she be discharged and the Bail Bond be delivered up upon her paying the Costs of this Court

ARCHIBALD KENNEDY QUI TAM &C. CONT BARKE
GALLEY & LADING.

A respite of proceedings permitted in a suit for illegal importation, in order that lawful papers might be obtained from the port of shipment. The manner of shipments and clearance at Barbadoes considered.

Nov 4, 1726 The affidavit of Charles Beilby the defendant and Dan Fletcher mate of the said Barke Gally were read and upon motion of Mr Murray, It is ordered that upon the defend^t giving sufficient security in double the value of the Vessell & Goods, he have nine months time to produce Cocquetts for the goods in the

Lybell mentioned. The Informant likewise being present in Court and consenting thereto.

(Certain papers having been procured (*semble*) from Barbadoes)

June 17, 1727 Mr Murray proctor for the defendant pray'd three certificates and agreement to be read and fyled, which was done accordingly and pray'd to have the bond discharged. Ordered the matters be argued.

Aug 22, 1727 The Lybell and 3 certificates & permit read and the matters open'd by the advocate Gen^l. Mr. Andrew Law and Mr. Thos Lynch being sworn in Court, and Andrew Law deposed that it is usual in Barbadoes for a person to take out a permit at the Custom house for a Thousand Gallons of Rum or a quantity of Sugar or Molasses for which he then pays the Duty, and if he does not take the whole on board mentioned in the permitt the Remainder is often assigned to another. That the Custom House is very irregularly kept at Barbadoes, the officers attending but one hour in four and twenty. That whatever is enter'd in the bill of Store is never incerted in the clearance at Barbadoes. That he has used to trade to Barbadoes about thirty years in which time he has had goods omitted in his clearance that were enter'd in post entry. David Provoost sworn, Says that the Custome in Barbadoes is as capⁿ Law has before said but that when only a part of the quantity of the Rum, Molasses &c. mentioned in a permit is shipp^d on board a Vessell, the person shiping gets it endorsed by a Waitor and then carried it to the searcher who certifies to the collector what quantity is shipt, and then Returns the permitt to the party, and that if a person looses a permitt upon making Oath before the Collector he has another granted.

Thomas Lynch says that it is usual at Barbadoes to take out a permit for a large quantity of Rum, Sugar or Molasses which they often Ship in sundry vessells and frequently Sell and lend such permits one to another. Robert Ellison being sworn in Court says that it has been the usage in the Custom house here that when a vessel has come into this port & has had Goods on board not mentioned in the Clearance & it appears there has been no intention of fraud they have taken Bond with Security that they will produce a Certificate that the Goods were duly enter^d and Shipt but by mistake omitted in the Vessells clearance. After full argument of the matters by Mr. Murray, Mr. Smith and Mr. William Jamison proctors for the defend^{ts} & by the Advocate Gen^l and Mr. Hamilton on the part of the Informant,—Cur Advisare Vult.

Aug 25 The Court does sentence and decree that eleven casks of Muscovado Sugar and six baggs of cocoa part of the Lading of the Barke Gally be condemned. That the ship Barke Gally with the remainder of her Lading be acquitted. That the Costs and Charges of this suite be paid by W^m Haynes & Jeremiah Lattouch the Stipulants, there having been Grounds for Seizure

CAPT MATTHEW NORRIS ON BEHALF OF THE KING
CONT 4 CASKS 401 BAGGS OF SPANISH SNUFF. &C.

An officer of the court who acts as proctor cannot officiate in his own cause.

A successful libellant is not required to give security on appeal.

A stipulator for costs, though also a claimant, is not liable beyond his stipulation.

May 25, 1727. Mr Chambers one of the proctors of this Court prayed that Solomon DeMedina Mosesson,

Moses DeMedina, Abraham de Medina & Rodrigo Pacheco Subjects of the King of Great Brittain be admitted defendants which was granted they stipulating in the sum of forty pounds current money of this Province on condition that the Defend^{ts} do abide the sentence & decree of this court

May 26, 1727 Rodrigo Pacheco & Isaac Depeyster Jun^r of the City of New York Merchants stipulate to our Lord the King each in forty pounds on condition that the defendants in this cause do abide the Sentence and decree of this court upon the hearing of this Cause. Mr. Murray moved that as the Register acted for the Advocate Gen^l in this cause the Depositions to be taken in this cause might be taken in the presence of the Judge which was ordered accordingly.

Sept 4, 1727 This court does sentence and decree that the 401 Baggs of Snuff and 100 Rolls of Tobacco in the Lybell mentioned be condemned but that the 4 Casks of Snuff be saved to the Reclaimants. Whereupon the Reclaimants prayed leave to appeal from the said sentence to His Majesty King George the Second in His privy Council which is granted.

Sept 5. Mr. Jamison proctor for the Reclaimants moved that the Lybellant ought to give security in the value of the Snuff and Tobacco condemned & damages &c, and the same is moved by Mr. Vernon & Mr Chambers. Upon hearing the arguments of Mr Murray, Mr. Smith and Mr. Price proctors for the Lybellant, The said Motion is disallowed and it is ordered that the Lybellant have execution of the decree.

June 26, 1728 Rodrigo Pacheco one of the Reclaimants having been served with a copy of the Lybellants bill of Costs in this cause as taxed by his Honour the Judge amounting to £73.6.2, and Isaac Depeyster who together with said Pacheco had stipulated in £40,

brought the said £40 into Court and prayed that the same might be received in Discharge of Stipulations. Whereupon his Honour ordered the Register to receive the same.

Nov 2, 1728 Mr. Murray proctor for the Lybellant prayed that the defend^t might pay the residue of the Costs Taxed not yet paid, and upon hearing Mr Chambers proctor for the Defend^t, ordered that no more costs be paid by the Defend^t than the stipulation.¹

THOMAS CHARLTON ET AL CONT DIVERS GOODS SAVED
OUT OF THE SHIP FRIENDS GOOD WILL.

Salvage of three-sevenths awarded on goods derelict from a wreck, the remnant held to be a perquisite of Admiralty.

(A libel having been filed on behalf of four parties described as informers, against cargo saved from a wreck at Egg Harbor, N. J., after due defaults noted:)

Dec. 3, 1729. On motion of Mr. Murray no person appearing to Gainsay the same, The Court Does Adjudge that the Goods in the Lybell mentioned be delivered to the Marshall of this Court for the Vendue Master, and that the said Vend. Mas. do sell the same at Public Vendue, and that the Moneys arrising by the Sale thereof be brought into this court to be Disposed off according to the prayer of the Lybell.

Jan 20, 1730 The Vendue Master Returned that he had sold the Goods at Publick Vendue for the sum of £126.11.9 $\frac{1}{4}$ current money. Whereof being Deducted & paid for ffees & Charges as followeth viz:

¹ In this case the libellant had (before suit) deposited with Judge Harison £10 sterling to cover the court fees. After decree this sum (equivalent to £16.5 current money) was divided by the Judge as follows, to himself £8.2.6; to the Register £6.14.6; to the Marshal £1.8.

To the Vendue Master & Cryer	£9	3	3½
To the Judge	4	14	6
To the Register	5	10	10
To the Marshall	1	16	0
To the Proctor	8	10	0
To the Informers	52	15	1
To John Blake for Storage of the goods	3	0	0
To Mr. Saml Moore for Charges & Trouble	3	10	

Which in the Whole Amounts unto £88 19 8½

which being Deducted out of the Principall Money the said Goods were Sold for, there Remaines £37.12.¾ which Is ordered to be paid by the Register to Mr Henry Lane Agent for the Hon'ble Robert Byng Esqr Receiver of the Rights & Perquisites of Admiralty.¹

¹ Mr. Lane's authority was entered on the minutes under date of December 10, 1729, as follows:

His Majesties Commission to Robert Byng Esqr Appointing him Receiver Gen^l of His Majesties Rights & Perquisites of Admiralty Dated the 9th of August 1727, His Majesties Instructions to the said Robt Byng Esqr of the same date, a Copy of an Order from the Ld Commissioner of the Admiralty to the Judge Register & Marshall of the Vice Admiralty of New York dated the 12th of October 1727, Requiring them to pay to the said Robt Byng Esqr or his Agents all Admiralty Perquisites that now are or hereafter shall be in their hands, and a Deputation from Messrs Robt Byng & Thos Jobber to Mr Henry Lane Dated the 13th day of Aprill 1728 to be their Agent at New York were read, and Mr Murray moved in behalf of Mr Lane that the Judge & officers of this Court may acquaint Mr Lane of any Perquisites of Admiralty now in their or any of their Hands or that shall Come to their or any of their knowledge.

There is found no record of Admiralty perquisites obtained through the Court in New York except under Judge Harison.

On December 30 following it appearing that the proceeds (£5.9) of "2 pcs of Linnen, 5 White Shirts & 1 Pocket Pistol" had lain with the Register since 1723, it was

"Ordered that the said Moneys after the Charges Deducted, altho'

THE KING VS SAMUELL BOOTH
THE KING VS ZEBULON DUDLEY ET AL

A single libel for fines or penalties may be filed against several persons alleged to have offended in the same manner at the same time. In such a suit plea of *nolo contendere* tendered and accepted, and the fines paid *held* to be perquisites of the Admiralty.

(Booth was Master, and Dudley et al the crew of the same vessel, whose name and offence do not appear.)

June 5, 1730. Mr Murray moved that Forasmuch as it Appears the Misdemeanor to be same in the Marriners as the Master, prayed that they might be prosecuted Joyntly, & upon hearing the Advocate Gen^l Ordered that the Master be separately prosecuted & the Marriners Joyntly.

June 24. The said Proctor for the Defend^{ts} Alleadged that tho they might Justifie what they had done, tho perhaps they went a little farther than they needed to have done, & the fear of the persons in the Whaling Sloop Carried them farther than they should have gone; But as the Business of the Defend^{ts} was urgent to be gone, & could not stay so long as a Tryall would require, Therefore they pray leave to protest their Innocency, but because they wont contend with our Lord the King they Submitt themselves to his & the Courts favour, & pray to be Admitted to a Small fine. And the Advocate Generall having Nothing to Object thereto, the Court does Adjudge that (*each of the seamen*) pay a fine to our Lord the King of Twenty Shillings, and that the said Samuell Booth pay a fine of

no Lybell has been fyled agst the Same Goods, be Delivered to the said Mr Henry Lane, he giving a Receipt for the same. But that this be no President for future proceedings."

On Nov 7, 1730, the owners of the Friends Good Will & cargo appeared, and on their petition a summary order was entered requiring Mr Lane to pay over to them what he had received "deducting thereout the Reasonable Charges & Salvage due."

Twenty Pounds, and the Charges of Prosecution. That the said fines be paid into the hands of the Deputy Register of this Court, and that he pay the Same into the hands of Mr. Henry Lane Agent to Robert Byng Esqr Receiver of the Rights & perquisites of Admiralty.

(From 1734-1738 the minutes contain no entries of trials, litigated motions, or points of practice. Judge Harison sat for the last time June 25, 1734, and no entries appear until Jan. 15, 1736-7, when Judge Horsmanden held Court merely to note a default.

Between this date and Dec. 19, 1738, there were but six sessions of the Court, and the only business done was to grant extensions of time to plead or fix stipulations in three cases, none of which proceeded further under Horsmanden, J.

On May 19th, 1739 it is noted:)

The Commission to The Hon'ble Lewis Morris Jun^r Esqr under the Great Seal of the High Court of Admiralty of England as Judge Commissary of the Provinces of New York East & West Jersey & the Colony of Conn^t was Read, As also a Commission to Capt John Fred appointing him Marshall & Serjeant at Mace of the said Court for the said Provinces & Colony.

(Judge Morris continued to be described as Jun^r until June 14, 1746, when (upon the decease of his father) this addition disappears.)

ATT a Court of Admiralty held for the Province of
New York at the City Hall of the City of New York

Present Hon^{ble} Lewis Morris Jun^r Esqr, Judge
Commissary.

THE KING AG'T EDWARD BURROWS
THE KING AG'T ABRAHAM DEPEYSTER ET AL

A sworn answer may be taken by commission. An independent libel lies to enforce a stipulation. The costs of an undefended libel for a fine or penalty set forth.

(Burrows while in New York in 1737, had been arrested at the suit of the Crown to recover a fine for an offence not described, and released on the stipulation of Depeyster in £600, to satisfy the decree if for libellant. He departed for Curaçao without answering, and in 1738 a commission issued to take his answer upon oath, such commission to be returned by the first of May next ensuing.)

May 19, 1739 The Advocate Gen^l alleadged that the time for returning the Commission for taking Deft's Answer is long since elapsed and no answer yet returned or fyled. Whereupon Mr Smith proctor for the Deft produced a letter from two of the Commissioners in which they say the Defend^t was gone to St Eustatia and was soon expected back and therefore Mr Smith prayed further time for the return of the Commission. The Court Ordered that the Rule for the Return of the Commission be enlarged for 32 days.

(After several further adjournments, the libel was taken *pro confesso* in default of an answer, and on)

Oct 20, 1739 On motion of the Advocate Gen^l for sentence in this cause the Court Does Adjudge that the Defendant Edward Burrows pay a Fine to our Lord the King of £1250 sterling, & that he be taken into



After the original in Mass.

Lewis Morris
1698-1762

JUDGE-COMMISSARY OF THE PROVINCES OF NEW YORK, EAST AND WEST JERSEY
AND THE COLONY OF CONNECTICUT
FROM THE PAINTING IN THE POSSESSION OF MRS. R. HORACE GALLATIN, AT HER
RESIDENCE IN NEWPORT, RHODE ISLAND

Custody of the Marshall of this Court there to Remain till he pay the Same.

Oct 22. The Marshall Returned the Process agt the Def^t that he is not found. Ordered that Unless the persons who have Stipulated for the Def^t to Abide the Sentence in this Cause Do Pay the sum in which they so Stipulated on or before Thursday next, That process Issue ag^t the Severall persons who have so Stipulated

Nov 19. The Marshall returned his Warrant that he had taken the Defendts

The Information (*vs Depeyster et al*) Read & fyled. Ordered the Defend^{ts} Answer in eight days.

(The Stipulators after obtaining further time to answer, demurred on grounds not ascertained; their demurrer being overruled, and no answer filed,)

Dec 14 The Court Does Adjudge that the Lybell or Information in this cause be taken *pro confesso* and that the Def^{ts} pay to our Said Lord the King the £600 in the said Lybell or Information mentioned together with the Costs of this Suit and that they be taken into the Custody of the Marshall of this Court there to Remain till they pay the Same,

Jan 9, 1740 M^r Nathaniel Marston one of the Defend^{ts} in this Cause brought into Court the Six Hundred pounds Current Money of New York which by the Order & Judgment of this Court on the 14th day of December they were Ordered to pay, Together with the Costs in the said suit against the said Securities of the said Edward Burrows Which said sum of Six Hundred pounds was paid into the hands of his Honour Lewis Morris Jun^r Esq^r Commissary of this Court Whereupon It is Ordered That the Stipulation entered into by the said Edward Burrows' securities be Delivered up to them, and they Discharged, and Accord-

ingly the said Stipulation was Delivered up to him the said Nathaniel Marston and the said Securities Discharged. And afterwards to-witt the same day in the Court aforesaid His Honour the Commissary paid the ffees of the prosecution of the said Edward Burrows out of the said Six Hundred pounds as follows to-witt

The Judges ffees	£23	14	0
The Advocate Generall's ffees	27	16	0
M ^r Murray assisting Council's ffees	11	5	
The Registers ffees as before	7	4	4
The Marshall's	1	17	0

Amounting in the whole to £71 16 4

So that there Remains in the hand of his Honour the Commissary Five Hundred & twenty eight pounds, three shillings & eight pence for the use of His Majesty.

ARCHIBALD KENNEDY QUI TAM &C AG^T THE SLOOP
MARY & MARGARET: THOS FOWLE RECLAIMANT

A plea to the jurisdiction must be on oath. By special leave testimony may be taken before answer.

Oct 2, 1739 The Defend^t having put in a plea to the Jurisdiction which was Read, the Advocate Gen^l Moved that the same should not be Received, which appearing to be in effect the same as the former plea, and it not being on oath as it ought to have been: The Court Ordered the plea to be Overruled, and that the Defend^t fyle his Answer by fryday next.

Oct 5. Ordered that the Defend^t have further time till Wensday next to fyle his answer in this cause, Also Ordered that the Informant be at Liberty in the mean time to Examine his Witnesses, and that such Depositions so taken be read in Evidence upon the hearing.

CAPT VINCENT PEARSE AG^T SNOW RESTORATION
THE SAME AG^T SHIP CANARY MERCHANT

A witness shall be physically protected in testifying, and may be examined before issue joined. Proceedings stayed by application for prohibition. Writ of consultation on refusal.

(These causes of prize not being at issue for want of re-joinders:)

Dec 24, 1739 Upon Motion of Mr Murray for Re-claim^{ts}, Ordered John Barron be protected in going to, Staying at & Returning from the Register's Office as a Witness in this Cause .

Upon Mr Smith's Motion & the Affidavit of Patrick Bearding that Thomas Fowler told him he was going to Philadelphia, Ordered The said Thomas Fowler be examined de bene esse in this cause

(Claimants pleas to the jurisdiction having been overruled, and testimony taken, hearing was ordered in June, 1740, but not held, because a prohibition was evidently applied for in England and denied, as no further proceedings are noted until Mr Smith and Mr Alexander for claimants on)

May 4, 1744 Produced his Majestie's Writt of Consultation in this cause which was read & fyled, & Prayed that as Publication had already been past a day might be appointed for the hearing.

(After two days argument both vessels were held lawful prize, but no record remains of the merits of the cases.)

CAPT JOHN LUSH AG^T SLOOP LA SOLIDAD

Advertisement of process by posting directed.

May 3, 1740 On motion on behalf of the advocate Generall The Lybell was read & fyled, and Proclamation three times made (&c) Ordered the first Default be entered. And That Monitions be afixed up at the

City Hall & at the Exchange for any person to appear to Claim &c

ARCHIBALD KENNEDY QUI TAM &C AG'T BRIGANTINE SILVIA.

To the claimant of a vessel libelled for navigating without proper documents, the informer may grant time to produce papers.

Nov 29, 1740 Upon motion on behalf of the Advocate Generall the Lybell was Read and fyled, and Proclamation three times made for any person to appear that had aught to say why the Brigantine Silvia with all her Tackle Apparell Furniture and Appurtenances in the Lybell mentioned should not be Condemned according to the prayer thereof to come forth and they should be heard. Mr Murray one of the Proctors of this Court prayed that James McComb master of the said brigantine Silvia might be admitted Defend^t which was Granted. And Thereupon Mr. Murray acquainted the Court that the want of a Register for the said Brigantine for which she is Lybelled in this Court was wholly owing to the forgetfulness of the master who was part Owner thereof and without any Design or Intention of fraud. And that the said Brigantine Silvia was built at Newry in the Kingdom of Ireland and that the said James McComb the master together with Rob^t Ross, Rob^t Hutchinson & James Moore all Subjects of the King of Great Britain were Owners of the said Brigantine, and for proof thereof produced a Mediterranean Pass under the hands and Seal of the Commissioners for executing the Office of Lord High Admirall of Great Britain. And further the said James McComb the master and Samuel McComb the mate of the said Brig^t being Sworn in Court Declare that the said Brigantine Silvia was Built at or near Newry in Ireland. That they were present and Saw her launched &

had Belonged to her ever since, that the said James McComb together with Robert Ross Robert Hutchinson and James Moore all Subjects of the King of Great Britain are the Owners of the said Brigantine, and that no Forreigner Directly or Indirectly hath any share or part or Interest therein. Mr Murray also acquainted the Court that at the Consent of the Lybellant the said Brig^t Silvie had been appraised by John Groesbeck, Anthony Duane, Joseph Royall and Edward McCormack of this City Merchants, And therefore Prayed (that as it fully appeared there was no Intention of fraud) the said Brigantine might be Delivered to the Master to proceed on his Intended Voyage he giving good & sufficient security in the appraised value of the said Brigantine to file a Certificate of Registration of the said Brigantine (conformable to the Directions of the Act of the 7th and 8th of King William the Third, entituled An Act for preventing frauds & Regulating abuses in the Plantation Trade) with the Register of this Court on or before the 29th day of May which will be in the year of our Lord 1742, which this Court held Reasonable, and Ordered Accordingly. And Thereupon the said John Groesbeck, Anthony Duane, Joseph Royall and Edward McCormack Appearing in Court, Declared that they had Viewed the said Brigantine Silvia with all her Tackle Apparel and Furniture and were of Opinion that she is of the Value of £230 Current Money of New York and no more. And thereupon the said James McComb together with Frind Lucas of this City merchant enter'd into Bond to his Majesty in the sum of two and fifty pounds Current money of New York, Condition'd for the filing a proper Certificate of Registration of the said Brigantine Silvia with the Register of this Court on or before the 29th day of May anno Dom. 1742 Whereupon It is Order'd by this Court that The said Brigantine Silvia

Together with her Tackle Apparel Furniture and Appurtenances be Delivered to the said James McComb master and part owner thereof.

Nov 3, 1741 Frind Lucas of this City Merchant produced unto this Court a Certificate of Registration of the said Brig^t Silvia which was Read & is in the words following viz^t:

P^t Newry. Jurat Rob^t Hutcheson of Newry Mercht^t That the ship Silva of Rostrever whereof James McCombe is at present Master being a Square Stern Brigg of the Burthen of Eighty tun or thereabouts was built at Rosstrever in Ireland in the year One Thousand Seven hundred & thirty eight, and that Robert Ross Esq^r & Jas. McCombe of Rosstrever & he this Depon^t & James Moore of Newry are at present Owners thereof, and that no Forreigners Directly or Indirectly hath any share or part therein. Dated at the Custom house in Newry this ninth day of Aprill 1741. Rob^t Hutcheson

Jonⁿ Clarke Coll^r

Jas Read Dept & Comp^r

Whereupon It is Ordered that the said Certificate be fyled & the Bond enterd by the said Frind Lucas and Jas McComb be Cancelled & Discharged.

THE KING AG^t JOHN LUSH

The competency of a witness whose testimony is taken by Commission is to be passed on when Commission returned.

Practice as to naming Commissioners.

May 12, 1741 Upon motion of the Advocate General Order'd that a Commission Issue to Commissioners to Examine Mr Wimbleton Lieutenant of his Majestie's Ship Worcester. And that the Advocate General & the Defendant each name four Commissioners and file their names with the Register of this Court, and

that each party may have Liberty to Strike out two by the 20th day of this instant, and that the Remaining Commissioners or any three of them, Return the Commission to this Court in five months nisi causâ. Saving to the Def^t all legal objections to the Competency of the said Witness

ARCHIBALD KENNEDY ESQ^R QUI TAM &C. AG^T SLOOP
SEA FLOWER, 130 HOGSHEADS OF MOLASSES
& 1 BARRELL OF CLAY & SUGAR

An informer in a revenue suit may compromise the demand of the libel with the approval of the Court.

March 12 1742 The Appraisers Appointed by this Court the 5th day of December last to Appraise the said Sloop Molasses & Sugar made their Returne That they have Appraised the same at £1420.12.6, which Apprais^{nt} was Ordered to be fyled, And thereupon Mr. Alexander proctor for the Lybellant acquainted the Court That the Informant Pursuant to the leave of this Court had compounded with the Owner of the said Sloop Molasses and Sugar for the Sum of Six Hundred pounds Current Money of this Province, out of which all the Charges are to be paid (which Composition is also Approved by this Court). And after Deducting the Sum of Forty Nine pounds eight shillings & two pence for the Lybellant's Charges & ffees of prosecution there Remained the Sum of Five Hundred and Fifty pounds eleven shillings and Ten pence which was paid to the Informant and Ordered to be Divided in thirds, According to the prayer of the Lybell.

THE LATE MATE & MARRINERS OF THE SHIP ALBANY
AG'T SHIP ALBANY HER GUNS &C.

If the owners of three-fourths of a ship pay that proportion of the seamen's wages, *held* that only one-fourth interest in the ship be sold to satisfy the unpaid balance of wages.

October 29, 1743 This Cause Coming on this day to be heard Mr. Murray Proctor for the Lybellants opened the Lybell, And upon Reading the three severall Answers of James Alexander Robert Livingston & Henry Cuyler who Claim three fourth parts of the said Ship and appears that they have paid three fourth parts of the Wages due to the Lybellants and Admitt that the other one fourth part of Wages is still due to the Lybellants, all which the proctor for the Lybellants Admitts to be true, and therefore Prays Condemnation of the Remaining one fourth part of the said Ship Albany Boat & Appurtenances &c; Whereupon the Court having Considerd of the premisses Does Adjudge Sentence & Decree That the said one fourth part of the said Ship Albany &c. not Claimed be and is hereby Condemned and that the said one fourth part of the said Ship Albany Boat & Appurtenances be Exposed to Sale & sold at Publick Vendue to the Highest bidder, by the Vendue Master of this City at such time & place as he shall appoint; on or before Wensday next, and that the Moneys arising at the sale thereof be by the Vendue Master paid into this Court, in order to pay the severall Lybellants their Wages due to them Respectively; Together with their Costs & Charges of Prossecuting their Suit, and the Remainder of the Moneys arising by said Sale (if any there be) to be paid to the Owner or Owners of said fourth part when he or they Appear & Claim the Same.

CAPT PETER WARREN AGT LE ST FRANCOIS
XAVIER & LADING

Foreign merchandise captured on a vessel condemned as lawful prize *held* not dutiable as foreign goods.

July 5, 1744 The matter being this day Debated whether the Sugars brought in in the French Ship Le St Francois Xavier and Condemned in this Court are Subject & Lyable to the Duty laid on Foreign Sugars by the Act of the 6th Year of His present Majesty, and the Same being fully Argued by Mr Alexander on the part of the Collector of this Port, & by Mr Murray on the part of the Captors and the Court having fully Considered the Same is of Opinion that no Prize Sugars are Lyable to pay the Duty laid upon Forreign Sugars &c.; But should be Decreed as Brittish from the time of the Condemnation, & can be subject to no other Duty than Brittish Sugars, and Lyable to pay upon the Exportation from this Port.

SAMUEL BAYARD ET AL COMMANDERS OF BRIG^t HES-
TER & SLOOPS CLINTON POLLY & MARY ANN
AG^t THE SHIPS LE PARFAIT, ET AL

The Court may order those persons captured with vessels proceeded against as prize to be confined until condemnation.

Aug 15, 1744 Upon motion on behalf of Mr Smith Ordered that the Commanders of the said Brig^t Hester & the Sloops Clinton Polly & Mary Ann forthwith cause all the prisoners brought in by them to be carried on board the said Brig^t & Sloops & there to be kept till the same prizes shall be Condemned & not Suffered to go on Shoar upon any pretence soever other than for Examination.

TIMOTHY REARDON ET AL AG^T FRENCH SHIP
VALLANT & LADING

The Marshal is authorized to employ suitable persons to care for property seized by him under process.

May 8, 1745 The Marshall of this Court Returned his Warrant that Pursuant thereto he went on Board the ship Vallant in the Warrant Mentioned & took the said Ship & Lading into his Custody, and there Requested the persons on Board the Said Ship to Assist him in bringing the Said Ship into this Harbour to a place of safety which the persons then on Board Refused to do, and that for want of proper Assistance he could not bring the said Ship into this Harbor in a place of Safety Whereupon the Court Ordered that the Marshall forthwith hire proper persons to assist him to bring the said Ship Vallant into this Harbour in a place of safety.

CAPT JNO JAUNCEY ET AL AGT THE SHIPS ARNOLDUS
& JOHANNES GALLEY & THE MARY ELIZABETH
GALLEY & THEIR LADINGS.

Partial examination of witnesses conducted in open court. Monitions to be advertised by posting.

Aug 9, 1745 Upon Motion of Mr. Murray Proctor for the Lybellants the Lybell was Read & fyled; and the Bundles of papers first delivered up by Capt Van der Kroon of the Ship Mary Elizabeth Galley & Capt Kool of the Ship Arnoldus & Johannes Galley were Delivered into Court and Sworn by Capt John Jauncey Capt Francis Rodewell & Capt Seth Place.

Upon Motion of Mr Smith the said Captains were Asked whether those Bundles Contained all the papers that were found on board the two ships, who answered that they were all to the best of their knowledge & belief

Ordered the first Default be Entered and that the Register prepare & the Marshall Affix up proper Monitions on the usual Publick places for any persons to Appear in this Court that have any Right or Claim to the Same

ROBERT McFARLIN AGT THOMAS WHITE

Witnesses' intention of departing to sea is sufficient reason for examining them *de bene esse*. A proctor's refusal to open and read his depositions does not prevent their perusal by the Court. The reasonable punishment of a mutinous seaman is justifiable, and killing him would be so, it being proven that he formed a design to murder the Master.

(Libel for assault on high seas by respondent as Master of Snow *Doddington*, after her capture and abandonment by the French as set forth in *Coventry vs The Doddington* (*post*))

Mr William Smith Jr for libellant

Mr Joseph Murray for respondent

The cause not being as yet at issue)

Feb 3, 1746. Ordered that Tobit Barnes, James Gee & John Whitby & John Martin be sworn & examined as Witnesses in this Cause, they being all going to Sea.

Nov. 28, 1749 This Cause now Coming on to be heard the Lybell and Answer were Opened by Mr Chambers on the part of the Defend^t. And Mr Smith Insisting that the Depositions ought to be read, the Register Declared that he had long since made Copies of all the Depositions Taken in the Cause for Mr Smith, which he Refused to pay for, and Expected that if he read the Depositions to be paid for the Reading of them by Mr Smith, which he Declared he would not do not having any of his Client's Money in his hands, whereupon the Judge Declared he would take all the Depositions and proceedings from the Register and Consider of them in Order to give Judgment.

Jan'y 12, 1750 The Court having fully Considered

the proceedings and Depositions Taken in this cause the Judge Delivered his Oppinion in the words following viz^t.

The Depositions all agree that the Lybellant was a Marriner belonging to the Snow Doddington, and was shipped at Liverpool, that he was one of the Marriners left on Board the said Snow when she was given by the French Cap^t to the Defendant; the Depositions also Agree in another point, that there was a Design or Plott laid by one Peter Reed and John Dickey two of the Marriners on Board of the said Snow to murder the said Defendant Thomas White, and throw him Overboard, and then to proceed to the Gold Coast with the said Snow. Indeed it does not appear by any of the Informations the Defendant had that the Lybellant was Concerned with the said Reed and Dickey, but by his Conduct after he had arrived at the Isle of May, Plainly shews he was Concerned with these mutiniers (or Pyrates more properly) for they ran away together in the Snows Boat, and Read and Dickey endeavoured to rob the tent on Shoar, and Seize the People's arms; and by the Depositions it appears the Desserters sent on Board a message to the Defendant to come on Shoar, and they would beat him, Nay cut him into pound pieces; it is clear by the Depositions that the Defendant pursued them with the assistance of some Officers belonging to a Boston Vessel, then at the Isle of May; and that the Lybellant was Taken and brought on Board and there Punished; it appears the Punishment was far from being either Cruel or Inhumane; it is proved the Defendant fired a Pistol at the Lybellant and like to have killed him, as to that, I think the Case was Justifiable, if he had shot all there, who had formed a Design to kill him, and only wanted an Opportunity to put it in execution; and that from the first Law of Nature which is self preservation. Besides it

appears by the Depositions that the Lybellant was Satisfied with the Defendant's Conduct, with regard to himself; that he received his wages from him when he arrived at New York and never Intended to prosecute the said White untill Jonathan Vincent (who became his security in this Court for the payment of Costs) promised to Carry on the suit at his own Charge, and for his reward was to receive one-half of what the Lybellant should recover which is a Crime that Deserves to be punished. Upon the whole I am Clearly of Oppinion that the Defendant be dismissed with his Costs of Suit in this Case sustained.

CAPT FRANCIS ROSEWELL OF THE BRIG^T TRITON AG^T
FRENCH PINK THE ANNUNCIATION, BOAT & LADING.

A privateer, within supporting distance of another vessel of war that captures a prize, takes no share if it is proven that she did not try, or intend, to aid in the capture.

(The *Annunciation* having been libelled as prize by the *Triton*;))

Apl 5, 1746 Jonathan Wickham claiming the office of first Lieutenant of the Sloop Hector belonging to Rhode Island Enters his appearance & claim of a Moiety of the Annunciation & her Lading.

June 17. This Matter having been fully argued on Saturday the 14th of this Instant by Mr. Smith on the part of the Owners & Company of the Sloop Hector,—and by Mr. Murray on the part of the Owners & Company of the Brigantine Triton, and the Judge having Considered the same, Delivered his Opinion thereon in the words following viz^t the Opinion I am Now to Give is what part or share the privateer Hector is Intituled to, of the Pink Annunciation, being in Sight when she was Taken by Cap^t Rosewell. The authoritys Quoted are Much to the same purpose, and I think they agree That if 2 vessells having Letters of Marque meet at

sea, and one of them take a prize before the other can Come up, Nevertheless the Last Vessell being Ready and Prepared for Battle has a Right to the Moiety of the Prize. That I take to be Just and agreeable to Reason. Because it is supposed that the Inducement to the Enemy to submitt sooner than otherways she would have done, was the other's being in sight and using all her Endeavours to Come up, to the assistance of the ship Engaged, and therefore Ought to be entituled to the Moiety,—Tho the Vessell Engaged with the enemy should be a vessell of much superior Force. But had they both been Engaged, In that Case I Conceive they would have shared in proportion to the Bigness of the Vessell, Number of Men and Largeness of the Guns.

But Cases of this Nature must Depend upon the particular Circumstances attending them; by the Depositions it plainly appears that the Sloop Hector was not making up to the said Pink, but keeping a Great Distance away from her, and steering a Diffirent Course, and what puts the Matter beyond Dispute is the Examination of John Raphael DeBilly which I took for my Own Information after he was sworn in the Originall Cause; he says when he first saw the Brigantine that Took him, the Sloop Hector was Much Nearer, and that if she had Pursued him, she might have Come up to him before the Brigantine; but that she steered a Different Course, and Came Round after the Brigantine; by this it is Clear she Intended to Run no Risque in Takeing the Prize. Therefore was not within the Words or meaning of any of the Authoritys Quoted; and Cannot be Intituled to a moiety.

Upon the whole I am of Opinion that the Privateer Hector is not entituled to any Share or part of the Prize, yet I Think it Reasonable that Cap^t Rosewell & Company should pay the Expence the Hector was put to in Carrying their Prisoners to Rhode Island.

EX PARTE SEVENTEEN INDIANS MOLATTOS & NEGROES

Persons condemned as lawful prize, because adjudged slaves, may, notwithstanding decree, subsequently apply for release, but *held* not entitled to freedom except on reimbursing to purchasers the amounts paid by them.

Sept 23, 1746 The Memoriall of Richard Bradley, Esq^r His Majesties Advocate Generall of this Province was Read setting forth that about the month of Aprill 1745 Cap^t Thomas Greenell & Cap^t Dennis then Commanders of 2 private Vessells of Warr, took a Gally belonging to the King of Spain & took out of her Twenty Indians Molattoes & Negros, nine of which were brought into this Port, & Seven of them Adjudged Slaves by this Court for want of proof of their being Free men. That since the adjudication sundry letters & Certificates have been sent from the Havannah & laid before the Gov^r & Council of this Province, Certifying that Seventeen of the said Twenty Indians, Molattoes & Negros were Free men, and Praying this Court to Review the proceedings agt the said Indians Molattoes & Negros and to Reverse the adjudication as to such of them as appear by the said Certificates to be Free men. Whereon It is Orderd That the Vendue Master give an Acc^t to the Register who the Seven Indians Molattoes & Negros were Sold to, which were brought into this Port by Cap^t Greenell and adjudged Slaves, and that the purchasers thereof be served with a Copy of the said Memoriall.

Sept 29 1746 This Court having Considerd the Memoriall of Richard Bradley Esq^r His Majesties Advocate Generall of this Province, and Examined the Proceedings of this Court finds, That only Nine of the Mollatoes, Indians & Negros Claimed by the Gov^r of the Havanah, taken on Board the Galley & one Molatto taken on Board a Sloop were brought into this Port by Cap^t Thomas Greenell, That three of them, to witt;

a Negro Man that called himself Anthony Peters, and one Indian Man who called himself Anthony Gaviello taken on Board the Galley, and a Mollato man named Manuell Servantes taken on Board the Sloop, were Acquitted by this Court as free men. That it also appears to this Court by the Oath of Don Joseph Espinosa That one other of the said Ten Molattoes Indians & Negros was gone from hence to the West Indies (the said Capt Greenell & his Owners having given him his Liberty). That it also appears by the Oath of the said Don Joseph Espinosa & the Certificates from the Havannah That two others of the said Ten Molattos Indians & Negros brought into this Court by the said Capt Greenell to witt; Anthony Abrahamaty De Bran & Michael Carvaxall are Slaves, and that one other whose name was said to be Thomas Joseph is since Dead; So that there only remain Anthony De Torres a Molatto who was sold to Thomas Barney, Fernando Bernell who was sold to Benjamin Payne and afterwards purchased by Francis Lewis, Anthony Aguilar Sold to Thomas Seymour and Manuel Servantes said to be Sold to Capt Farmer, by the oath of the said Don Joseph Espinosa and the Certificates from the Havannah appear were free men. And it further Appearing to this Court That sundry Molattos Indians & Negros taken in the Galley were Carried into Rhode Island, and there condemned as Slaves, and sold to sundry persons, But some of them afterwards appearing to be free men were Discharged upon the purchasers of them being Repaid their purchase money.

That as no evidence appeared to this Court of the said Anthony De Torres, Fernando Bernal Anthony Aguilar or Manuel Servantes being free men at the time of the adjudication; this Court did therefore Adjudge them to be slaves, and under that Decree they were Sold at Publick Vendue, and therefore This Court

thinks it would be extreamly hard for the severall Purchasers to lose their Purchase Money, But is of Opinion and accordingly Does Order and Decree That the said Anthony De Torres, Fernando Bernal, Anthony Aguilar and Manuel Servantes be Restored to their Freedom upon the purchasers of them being Respectively paid their Purchase Money.

EX PARTE JOHN RETON

One found a slave, and therefore condemned as lawful prize, may at any time after final decree apply for a reconsideration thereof.

(The applicant having been adjudged prize on July 4, 1745, and sold at public auction as a slave:)

May 1, 1747 Mr. Benjamin Nicoll on behalf of the Advocate Generall Produced to this Court a Certificate under the hand & seal at Arms of the Marquis de Vaudreuil Certifying that a Molatto named John Reton who had been taken by Capt John Eason and Condemned in this Court, was a Freeman and Prayed the Court to Reconsider and Review the said Sentence, Cur. Advisare Vult.

Jan 7, 1748 I have Reconsidered the Judgment I Gave on the Condemning a Molatto fellow brought in here as a prize, taken on the Coast of the Island of Hispaniola, and Sold by the Decree of the Court to Mr René Helt.

By the Marquis De Vaudreuillés Certificate, and Peter Dejoncourt' oath it appears that he was Deemed at the Cape a freeman, and by the Affidavit of Mr Christopher Robert he Declares he had got the Reputation of being a free molatto there; but his being Born at Culdesac three hundred and sixty Miles from Cape which is the Residence of the Marquis of Vaudreuille with the severall Circumstances particularly set forth in the said Christopher Robert's affidavit, It appears

he is a Slave. Therefore I am of the same opinion I was when I Pronounced the first Decree with Regard to him.

WILLIAM COVENTRY AG'T THE SNOW DODDINGTON
AND THOMAS WHITE.

This court has jurisdiction of a libel for possession. Legal exceptions may be heard on Libel and Answer only.

A captor who makes a gift of his prize, before legal condemnation confers no title thereby.

The master of a British vessel captured by the French, and by the captors abandoned to him, who brings said vessel into a British port, laden with his own cargo (*semble*) procured after capture, is entitled to a reward as for salvage and is not compelled to pay freight on his own cargo; but the seamen's wages and such goods and stores of the owners as were expended after capture must come out of the salvage award.

(Libel by Coventry on behalf and at the instance of the owners of the Doddington, praying the possession of that vessel, which had come into New York under command of White with salt on board. The French had captured her, but (as White averred) gave her to him. He thereupon took her to the Scotch coast and loaded salt for New York on his own account.

This assertion of ownership as well as jurisdiction over the *res* was heard on the answer, thereupon)

Dec. 23, 1747 Two matters were argued by Mr. Smith on the part of the Lybellant, and by Mr Murray & Mr Chambers on the part of the Defend^t. And the Court having Considered the same is of Opinion, That the Lybellant has a right by law to file his Lybell and proceed thereon: And that the Gift Pleaded by the Defend^t does not Vest any Property in him.

(White (*semble*) pleaded alternatively that if he took no title by the gift he was entitled to recompense for bringing his vessel into a British port. Thereupon the pleadings were completed by Replication and Rejoinder; and the Snow and

cargo sold without opposition, and the proceeds held to await disposition of White's claim for some reward. As to which the Court gave opinion,)

Feb 13, 1748 Had the Snow been Retaken by a privateer the salvage might have been Ascertained by the Act of Parliament.

But in this Case it is objected that the Vessell not being Retaken no salvage is due, but only a Quantum Meruit for the Masters care.

Before the making of that act of Parliament a Vessel taken by the enemy and Carried Infra Presidia Intirely altered the property; and if she was taken by a King's Ship she was Immediately Infra presidia. And tho she was afterwards retaken, the British Owners could have no claim but she would be Good prise to the Captors.

Had Cap^t White sold the Vessell in a Neutral port by force of the ffrench Captain's Gift of her to him, I don't Conceive it would have been an Illegal act in him; but this Vessell is now Brought into an English port; And by that means the british Owners are intituled to Claim their property. Therefore with regard to the owners she is in the same situation as if she had been Retaken, for in any other shape the Owners could not have Come at their Right, but in the following cases, either by Gift to the Captain or one of the Crew, or by Deriliction. Therefore I can see no Good Reason why the Owners should not pay the same Salvage in one case as the other. Their property it is plain was in the Enemy's hands and they are become possest of it at its being brought into an English port. Now whether she was Retaken or Given to the present Captain, or a Derilict to the Owners, it must be the Equall; therefore I do adudge, that $\frac{1}{3}$ of the Value of the Snow & Cargo be paid to Cap^t White for Salvage.

I am further of opinion that Whatever Goods were sold at the Isle of May or St Jago, the Capt^t ought to be Accountable to the Owners for the price they there sold at,—except what were sold for the purchasing of provisions for the people.

The payment of the Men's Wages; had she been Retaken she must have been brought into an English port at the Expençe of the Captors. As she is at present in the same Situation, the Men's Wages and feeding of them here till the time of the Vessell's being sold, must be paid out of the salvage.

Had she been Retaken he might have put On Board her what he thought proper, and the Owners of the Vessell Could not be Intituled to any freight. So in the present case he ought to pay no freight for his salt.

(Having taken evidence as to what stores or goods White had sold, further judgment was given on)

May 5, 1748 Capt^t White ought to pay the owners for the following Goods, he having Applied them to his own use and spared them to Capt^t Kidder at the Rates annexed to each Article

To 80 Gallons of Brandy at 16/ per Gallon	£64. 0. 0
To two Barrels of Rice	1. 4. 0
To 35 hundred of Ship Bread at 14/d per hund	24. 10. 0
To one Quarter Cask of Bread at 25/d per hund	6. 3
To some Tobacco	15. 0
To a Small Boat	8. 0 0
To two Iron bound Water Cask	1. 16. 0
To Sails made use of for Salt Baggs & others Damaged	20. 0. 0
	£120. 11. 3

The above sum to be deducted out of the Salvage allowed to Capt White.

(The amount actually paid to White after deducting all costs, charges and expenses was £419.11.21½ current money. The *Doddington* sold for £1947.2.10½ (Minute of July 5, 1749).)

CAPT ARTHUR HELM AGT 1340 PIECES OF EIGHT &C.
THE KING AGT ARTHUR HELM.

A French vessel, showing both a trading license and a pass from a British General to act as a cartel, was captured by an English privateer, sent into St. Christopher, libelled and acquitted. French property taken from on board *held* lawful prize, but the privateer liable for the loss of use of the French vessel from date of capture to that of leaving St. Christopher.

(Captain Helm of the Privateer *Polly*, captured the French Sloop *Le Levrier*, while the latter was bound from Martinique to Barbadoes, with a license from General Matthews (commanding at Barbadoes) to carry and deliver certain prisoners of war, who however had been landed elsewhere prior to capture, for reasons not appearing.

The *Polly* sent the sloop into St. Christopher for condemnation, but brought the portable property taken from the French passengers to New York and there filed libel.

Upon release of *Le Levrier* by the Admiralty Court at St Christopher, the Marquis de Caylus (Commandant at Martinique) procured the Advocate-General to sue Helm for disobedience of Royal Instructions to privateers and violation of flag of truce. The causes having come on together the Court delivered a judgment on September 4, 1747, to which the Crown tendered an appeal, whereupon)

Jan 7, 1748 This Court having reconsidered the Judgment Given in this Cause so as to make the same More Certain; Delivered an opinion thereon in the words following viz^t

It appears by the severall affidavits that the French sloop *Le Levrier*, taken by Cap^t Helm was designed as

a flag of Truce; to Carry forty British prisoners to the Island of Berbadoes, from the Island of Martinique; that these prisoners were afterwards put on shoar, but for what Reason do's not appear, and the said Vessell proceeded on her Voyage to Barbados the next day, with proper Credentialls for a flagg of Truce; as appears by some of the Depositions; that upon her being Taken there were none but Frenchmen On Board. The affidavits proved that she hoisted the proper Colours for a flag of Truce; however as there were no British prisoners On Board, the Captain might justly suspect some fraud, and his sending her to St Christopher's to be Libelled in the Court of Admiralty for Condemnation, shewed he had no Criminall Intention, otherwise He never would have sent her to be Lybelled in a Court of Admiralty. Her being Discharged without a Tryal was entirely Oweing to the conduct of the persons Capt Helm Employed to Lybell her. Had the suit been Carried on at that time, the thing might have been more fully proved. It appears plain by all the proceedings that french policy hath not been wanting in conducting the Whole affair, and that is Manifest by the Claim put in by the Marquis De Caylus for the same sloop taken afterwards by Capt Richards, when all he thought proper to produce was the pass from Generall Matthews for the Sloop Le Levrier going to Martinique,—and in My Opinion he could not be Intituled upon that Claim to the sloop; except he had produced the Original commission from himself Constituting of her a flag of Truce, or an exemplification of it. For General Matthews Giving a passport for a french Vessell being a flag of Truce, I don't think agreeable to the Laws of Nations. Neither could it protect the Marquis De Caylus property.

Captain Helm I conceive is not Lyable for any Damages the flag of Truce might have Suffered by being

Taken and Carried into Barbados by Capt^t Richards, because he sent him down to St^t Christopher's all the Credentialls he found on board her, which were Delivered to Jubert the French Captain. And if he put them on Board the other flag of Truce, Helm could not be Blamed.

Neither is it reasonable Capt^t Helm should pay the Money that the Marquis De Caylus forced the English captors to pay that were prisoners. It was an unjust proceeding, had the Marquis of Caylus been Injured, a Regular application would have Redressed him, but to force the prisoners to pay what he demanded, I cannot think agreeable to the Law of Nations.

Upon the Whole as it fully appears by the severall affidavits of Ralph Payne Esq^r Willet Taylor and John Willett that the Sloop Le Levrier was a flagg of Truce, I am of opinion that Capt^t Helme Ought to pay the Charge of the Vessell, which is Computed at Six pounds pr Diem, from the time of her Caption to the time of her being Discharged by Generall Matthews and her sailing from St^t Christopher's, which appears to be six days with the Costs of the Suit.

Whereupon Mr. Benj^m Nicoll in behalf of the Advocate Generall prayed Leave to Withdraw his Appeal fyled in this Cause.

ARCHIBALD KENNEDY QUI TAM &C AG'T BRIG^T
ELIZABETH &C.

Semble that a public official may not bring a statutory action otherwise than by the law officer of the Crown, except with leave of Court.

(Captain Seth Place of the Privateer *Knowles* filed his libel against the Brigantine *Elizabeth* and lading alleging her to be his prize, Mr. William Smith, Sr. being his proctor. Subsequently Mr. Kennedy (Collector of Customs) on his own behalf and that of the King and Governor asserted that the

Elizabeth was not lawful prize, but was engaged in violating the navigation laws under cover of a pretended flag of truce, wherefore he sought to claim the Brigantine and defend against Place, and also averred his intent to file an independent libel for forfeiture.)

May 4, 1748 The Petition of the Lybellant (with the Affidavits annexed) Praying Mr. Smith may be assigned Council for the King was read. And the Court being Informed that Mr. Smith was acquainted with all the Secrets of Seth Place the other Lybellant, and the allegations of the Petition being Denied to be true, and there being other Council in Town not employed, the Petition was Rejected.

(Whereupon Mr. Benjamin Nicoll was chosen to represent the Crown. Mr. Lodge appeared for Bartholomew Fabre claimant; and the Court held the *Elizabeth* a lawful cartel or flag of truce, *semble* for lack of proof on the part of both Place and Kennedy. Decree of acquittal followed, but Fabre found the vessel in such bad condition that he could not pay for necessary repairs, whereupon he prayed for sale by order of Court; accordingly)

Sept 3, 1748 This Court Does Order and Decree That the said Briganteen *Elizabeth* with all her Tackle Apparell Furniture Boat & Appurtenances be Sold and Disposed off at Publick Vendue, and the Moneys arising by the Sale thereof after Charges Deducted be paid into the said Bartholomew Fabre for the use of the owners of the said Briganteen.

THE FRENCH SHIP LE HEUREUSE.

How far and to what extent vessels of war within sight or supporting distance of another which effects a capture shall share in the prize always depends on the special facts shown. There must at the least be intimidation of the prize, contributing to surrender, to justify any award.

(*Le Heureuse* surrendered to the Privateer *Royall Cath-*

erine; The *Brave Hawke* and the *Phoenix* claimed shares for reasons shown in the opinion.

Mr. Richard Nicholls for the Royall Catherine;

Mr. Joseph Murray for intervenors.)

July 5, 1748 This Cause Comeing on this day to be heard, the Depositions taken in the Cause were Read; and the matter being fully argued on both sides; and the Judge having fully considered the same gave his Opinion in the words following viz^t all the Evidences in this Case agree that the Sloop *Phoenix* was in Sight when Cap^t Burges took the *Pallacca Le Heureuse*. And it is Generally agreed by all the Evidences that she was about three Leagues to Leeward. They all say they did not know she was a Privateer, and further that they did not strike to Cap^t Burges because she was in sight. Some say the sloop was so farr to Leeward she could not have taken the *Pallacca*. One or Two of the Evidences say she could have taken her. The questions that I have now to Determine are what share the *Hawke* is to have; and what share the *Phoenix* is to have of the *Pallacca* taken by the Royall Catherine. The evidences agree that not one of the vessells was near enough to be Distinguished by the Sloop; they say with regard to the Rest they were at so great a Distance they could not Distinguish what they were. It is the Common Received opinion that one Privateer being in sight when Another Privateer takes a Prize; she that is in sight is entituled to a Share tho she did not fight, neither was Aiding or assisting.

All Cases of the Kind Depend on the particular Circumstances of each Case. If one Privateer attacques the Enemy, and another Vessell is in sight, and her bearing down upon the Enemy is the reason that the Enemy Strikes to the Privateer, that vessell in justice ought to be entituled to a share tho she was a Mer-

chantman, because it was through her means that the Privateer became possessed, but being in Sight only cannot entitle them to a share, except the enemy be Intimidated by them. For it is plain except I am aiding and assisting in taking a Prize, I ought not in Justice to be Intituled to a share. Now in the present Case it is plain the Hawk was at such a Distance that she could not be distinguished by the Enemy. Therefore I am Clearly of Opinion she cannot be Intituled to any share.

With Regard to the Phoenix, she was about three Leagues to Leeward and could be Distinguished as a Sloop. Some of the Evidences say a league & a half. But the Evidences all agree that the Pallacca did not strike to Capt^t Burges because the sloop was in sight, but because he was a Vessell of great force. And they say that if Capt^t Burges had not taken them the Phoenix could not have taken them. Upon the whole I am of Opinion That the Phoenix is not Intituled to any share of the prize Le Heureuse. Neither is she within the words or the Meaning of the Authorities Cited.

JOHN BURGESS AG'T MARTIN BECKER

An appeal may be dismissed by the lower court unless security be given.

Sept. 20, 1748 Mr. Smith Advocate for Capt. John Burgess Acquainted this Court that on the 14th day of July last Capt Martin Becker had fyled in the Register's Office a Minute of an Appeal from the Sentence of this Court, But had not yet given any Security to prosecute the said Appeal and therefore Prayed that unless the said Martin Becker give Security by a Short day that the Appeal be Dismissed.

Whereupon it is Ordered that unless the said Martin Becker give Security to prosecute his Appeal Pursuant

to the Act of Parliament by Fryday next that the said Appeal be Dismissed.¹

CAPT JOHN BILL AG'T SNOW CONFIRMATION & LADING.
SAME AGT SNOW SPEEDWELL & LADING.

A privateer that recaptures from the enemy a British vessel, which was both taken and retaken after royal proclamation of cessation of hostilities, but in ignorance thereof, is entitled to salvage.

Such proclamation construed in respect of the time it became operative at distances from the British Isles greater than that of Cape St. Vincent.

Whether a party can appeal from a decree moved for by himself, *quaere*.

An appeal tendered after expiration of time allowed therefor, refused.

(These two Snows having been brought into port as prize to the *Royall Catherine*, decree for libellants seems to have passed on the request of both parties. It subsequently became known in New York that preliminaries of peace had been signed, and on)

Oct 13, 1748 The Petition of Joseph Haynes claimant (*in each case*) was read alleaging that the said Snow was taken by the French after the time Limited by his Majesties Proclamation for a Cessation of Arms, Which being Denied by the Lybellants Proctor, but alleaged that even then they were entitled to Salvage, Ordered . . . that the same be further Argued . . . tomorrow

Mr Nicholls & Mr Nicoll for libellants;
Mr Smith & Mr Chambers for claimants.)

¹ This motion grew out of *Le Heureuse*, *ante*. The opinion prevailed that an appeal suspended, if it did not vacate, the decree appealed against. (See the *Confirmation*, *post*.) The practice here shown is equivalent to a supersedeas or stay on security, but these words are not found in the records.

Feb 2, 1749 The Court Then Delivered an opinion in the words following viz^t

The principall thing Insisted upon by the claimants is that at the time of the vessells being Taken by the ffrench, they were to the northward of the latitude of Cape St Vincent, and after the Expiration of the six weeks, and consequently they could not be made prize; and if they had been carried into the Enemys ports they must have been Restored; this they say fully appears by the Kings Proclamation for fixing the times and places when and where the Cessation of Arms shall take place.

Before I proceed, I would just observe that the Judgements in this Court against these Vessells were Compleat, and were Given at the Request of the severall Claimants, as well as the Lybellants.

However I shall Endeavour in the best manner I am able to consider the several arguments offered in this case.

First as to salvage; If the matter be Considered in that Light, suppose the Vessels Taken in the Latitude where the cessation of Hostilities took place; but that the Retakers were Intirely Ignorant of the Cessation of Arms; and having Brought them into an English port,—whether they ought not to be Intituled to Salvage for the care they Took of the Merchants effects and Vessells. It is plain that had they met with these Vessels as before in time of peace, and found the Marriners on Board all sick and Unable to Navigate them to their Distant ports, and they had Brought them in here, I am clear there would be a salvage due to those that Brought her in, and why not in this case? The Marriners in the case of Sickness were prevented by the Act of God from performing their Voyage, and the Marriners in this Case were prevented by the Enemy, who were Carrying them into their own ports, notwith-

standing the Cessation of Arms. The privateer seeing this, Retook the Vessells, and Brought them into an English port, by which means the English owners became Vested in their property, and therefore in Justice they ought to pay Salvage, for it is established by the Laws of Nations that whenever a Merchants Goods and Vessels are saved, or any part of them, by persons not belonging to the Vessell, there is always a Salvage due. If there is anything saved by the Marriners belonging to the Vessell, in that Case it is for themselves, because it shall be appropriate to pay their wages. I am clearly of opinion there is a salvage due to the Royall Catherine for bringing these Vessells in the port, even allowing they were Taken in the Latitude where the Cessation of Arms took place, at the time of their caption by the French.

But there arises another Question, and that is whether they Were Retaken to the Northward of the Latitude of Cape St Vincent by the Royall Catherine, which I don't Remember to have been mentioned by either side.

Now as to the Kings Proclamation on which so Great Stress is Laid, I find no such thing as Latitude mentioned in it; the Clauses of the Proclamation with Regard to the Cessation of Arms are Conceived in plain, strong and expressive English words.

One of the Difficultys Raised by the Gentleman who appeared for the Claimers, was that there was no Terminus a Quo fixed in the Proclamation. I conceive there are four Terminus a Quo fixed, the first is in Regard to time, that is from the signing the Preliminaries. After the space of Twelve days, all Vessells Taken in the Channell and North Seas should be Restored; the next Terminus a Quo [is] from the Channell, the British Seas and North Seas and the Terminus ad Quem is Cape St Vincent; the third Terminus a Quo is from

Cape St Vincent and the Terminus ad Quem to the Equinoctial Line; the 4th Terminus a Quo is from the Line and the Terminus ad Quem to all the other parts of the World.

If the Latitude of Cape St Vincent was meant and Intended, and not the Distance; then it is plain there could be no use of mentioning Six Months beyond the Line; because some of the ports of China Lye to the Northward of that Latitude. Then it would be plain that all the Vessels Taken on that Coast from the enemy after the expiration of Six Weeks from the signing the Preliminaries should be Restored, if that explanation Take place.

If the Latitude of Cape St Vincent is meant and Intended how will you be able to explain those Words of the Proclamation *as far as Cape St Vincent* by any Determinate Number of Leagues or miles, which is absolutely necessary to understand that article? If it is as far as the Latitude of the place, and not the Distance to the place, then that Distance may Differ some thousands of miles, which would be giving so Great Liberty to all persons in the explanation of that article of the Proclamation,—which never could be the Intention of the Contracting partys.

But what can be the use of fixing any times and places in the Preliminaries when and where the Cessation shall take place, but that the parties engaged in the War may have timely notice to Cease from Hostilities; how then is it possible that those that are Cruising to the Northward of the Latitude of Cape St Vincent on the Coast of China, can be supposed to have notice of the Cessation in Six Weeks time, but if the Latitude is meant and Intended all prizes taken there after Six Weeks must be restored.

But the express Words of the Proclamation, and the Reason of the thing plainly shew they can have no

other meaning but the Distance from the British and North Seas as far as Cape St Vincent; and there is no dispute but that the place where these Vessells were Taken by the Enemy exceeded that Distance by some hundreds of leagues.

Upon the whole I am Clearly of opinion, the Claims ought to be Dismissed; that the first Judgements I gave on the severall Vessells stand good till Reversed upon an appeal from the severall Sentences. But how far the present Claimants can appeal from Judgements given at their Desire and Consent may admitt of some dispute.

Mr Smith Advocate for the Claimant prayed leave to Appeal.

May 12 1749 The Court having Considered the arguments in this Cause, the Judge gave his Opinion in the words following viz^t

The Case before me to be Determined whether the Petitioners have a right to appeal from the sentence given in judgment was at the request of both parties and pursuant to that request.

The judgment was given two months before the Petitions were presented; whether with or against the Consent of parties, is not Materiall to the present Case.

It is plain and I believe will not be Denied that any Person that thinks himself agrieved by any Sentence in this Court is Intituled to his appeal. The Method and Manner of that appeal is Particularly ordered and Directed by an Act passed in the 17th year of his present Majesty's Reign, where it is enacted that the person appealing shall Lodge it within 14 Days after Sentence. By the Rules of the Civil Law the Ordinary denied against a Sentence, is by way of Appeal; for every Sentence after the time Limited to appeal from it being to be taken pro veritate, or till it appear to be

otherwise by the Sentence of a Competent Judge that shall reverse it.

Every Person has a right to make use of any Judgment given in this Court in his favour, till such Judgment be Appealed from, or Reversed; and the Judge (whatever his Inclinations may be) has it not in his power to reverse his own Sentence; except it afterwards appears that such Judgment was Obtained by false suggestions or manifest untruths. As that is not the present Case I don't think the petitioners Intituled to an Appeal, having not Applied within the time Limited by the Act of Parliament; therefore I cannot grant it.

But if they think proper to appeal from the last opinion that the Vessels were not taken within the Limittes prescribed by the preliminary Articles, whenever they will give the Security Directed by the act of Parliament, the Appeal shall be granted.

CAPT. ROBERT TROUPE AGT BRIG^T AVE MARIA

A British vessel captured by an enemy and subsequently retaken pays, under the Act of Parliament, salvage computable on so much of the vessel as remained on recapture.

Betterments and additions made by the enemy captors belong entirely to those who recapture.

(Libel against Spanish Brigantine *Ave Maria* and cargo as prize to the Privateer *Hester*.

Mr. Smith and Mr. Chambers for libellant;

Mr. Nicholls for claimant.)

Nov 11, 1748 The Judge gave his opinion in the words following viz^t.

It appears by the Deposition of Joseph Albertos the Spanish Captain (by which Deposition both parties have mutually agreed to be Determined) that the Brigantine *Ave Maria* was the Vessell called the Lark taken from Captain John Long; that she was Carried

to the Havanna, and there Condemned Lawfull prize and of course became Spanish property. It appears by the said Deposition that severall things were added by the Spaniards vizt beams some New Timbers part of her New Bottom, as will more fully appear by the affidavits.

Now I take the question that Lies before me is, What is to be Restored to the Claimants, and I conceive nothing will answer that Question so fully as the Clause in the act of parliament for the Restoration of goods to British subjects passed in the 13th year of his present Majestie's Reign, which for the better Illustration of the case I shall Recite.

“Provided always and be it Enacted that if any Vessel or Boat Taken as prise, or any Goods therein shall appear and be proved in the Court of Admiralty to be belonging to any of his Majestie's subjects of Great Brittain or Ireland or any of the Dominions and Territories Remaining & Continuing under his Majestie's protection and obedience which were before taken and surprized by any of his Majestie's enemies, and afterwards again Surprised and Retaken by any of his Majestie's Ships of War, or any private men of War, or other Ship Vessell or Boat under his Majestie's protection or obedience, That then such Ships Vessells boats and Goods and every such part or parts thereof as aforesaid, belonging to such his Majestie's Subjects, shall be Adjudged to be restored and shall be by Decree of the said Court of Admiralty accordingly Restored to such former owner or owners or proprietors, he or they paying for and in Lieu of salvage, &c.”

By this Clause there is to be a Restoration to the former owners, and the word Restoration in the most extensive sense, means no more than Returning the same Goods that were taken from the British subjects by the Enemy to the owners from whom they were

taken; and the Word Restoration can't be understood in any other sense; for to Give Goods to former owners belonging at the time of the Caption to the enemy, cannot be called a Restoration within the meaning of the words of the act of parliament. But the words of the act of parliament put that matter beyond dispute, for it says that every such part or parts of vessels boats or Goods belonging to his Majestie's Subjects shall be adjudged to be Restored to the former Owners, and they could (not) say nor mean any more, because what was taken from the Enemy belonging to them, Vested in the Captors after sentence in the Court of Admiralty; and nothing could be Restored but what formerly belonged to British subjects, and the Word Restored by the express words of the act can mean no more.

Upon the whole I am Clearly of opinion that everything added by the Spaniards to the Brigantine Ave Maria belongs to the Captors; what formerly belonged to the Claimers I am of opinion ought to be Restored on their paying salvage pursuant to the act of parliament, which is one half Clear of Deductions.

CAPT JAMES HOLBURNE AG^T MICHAEL CRISPIN AND
PETER LABBY

Circumstances stated under which a vessel of war within supporting distance is entitled to a share in another's prize.

A captor who by false statements procured the absence of one entitled to share in the prize during condemnation proceedings, is personally liable for the share of the person defrauded.

Where there are several captors, the extraordinary share of a wounded man comes solely out of the award to his own vessel.

A demand enforced by attachment in Admiralty.

(Respondents were the captains of certain privateers. They captured a prize in sight of the man of war commanded by libellant. By methods set forth in the opinion the prize was

brought to New York, libelled and adjudicated before libellant knew where she was or what the privateers were doing.

After said final decree Captain Holburne began his action, which seems to have been originally in name against the prize, but by amendment against respondents who claimed.

An attachment issued as noted below.)

Dec 10, 1748 The Marshall Returned That he had attached the sum of £4003 in the hands of Messrs. Joseph Reade, James Depeyster & William Axtell.

Feb 2, 1749 Ordered that the Appearances of the said Joseph Reade James Depeyster & William Axtell be entered and that they file their Answers in Eight Days.

(Reade et al were evidently the agents at her home port of the privateer commanded by respondents.)

Feb 4, Ordered that the Defendants give Security in Eight Days for So much Money as was in their hands when the Attachment was Served or that the fourth Proclamation be made.

(To prevent such proclamation, and consequent decree for want of due Security, Reade stipulated for £1878.16.7¼ and Axtell (*semble* for himself and Depeyster) for £2121.2.4¼, current money, and thereupon the cause went to trial on the Garnishee's answers, there being no record that Respondents answered, appeared or were served with process. Neither does it affirmatively appear that they were without the Province at the time suit brought.

Mr. Murray & Mr. Lodge for libellant;

Mr. Smith & Mr. Nicoll for Garnishees.)

April 18, 1750 The Lybellant as Commander of his Majestie's Sloop of Warr called the Barrington Demands one Moiety of the Prize Ship St Antonio a la Conception that was taken by two English Privateers, the Trelawney Gally commanded by one Michael Crispin and the Sloop Security commanded by one Peter Labby as being in sight at the time of the Engagement

and making all the sail she could to come up to their aid. The Defendants in their answer to the Lybell say they did take the Spanish Ship the St^t Antonia a la Concepcion but they Deny that the Sloop Barrington was to their or their Company's knowledge at the time of taking the said ship in sight; and they say had she been in sight and as near as is pretended in the Lybell at the time of the Capture, she was at so Great a Distance to Leward that she could not have had any Influence on the said Capture, because she was so Deep Loaden she could not have come up with the Spanish ship and that she was Sailing a Different course. Whereupon after these Defendants had Manned the Prize Ship and Directed her Course for the Port of New York, whither she was sailing, that they gave the Barrington chase and prepared to engage her; but they say they never heard any Demand made by Captain Holburne as in the Lybell is suggested; they further answer and say that supposing she was in sight they deny she was a vessel of Warr (having but 30 hands officers Included) or that she had any authority or commission whatsoever that did Empower the Commander of her to pursue seize or take with the said Sloop any Ship Vessell or Merchandise Goods or effects whatsoever belonging to his Majestie's Enemies; but that Cap^t James Holburne was employed to carry Provisions for the use and service of his Majestie's Fleet in the West Indies under the command of Admirall Knowles and had particular and express orders not to Speak to any vessell in his passage but to make the best of his way to the Fleet.

This is the Substance of the Lybell and answer, how far the severall facts in both have been made out will appear by the Depositions Exhibits and the particular Circumstances attending this case.

The Law seems to me agreed by both sides, being

one case from whence all the rest of the authorities are taken.

I shall first point out the things that both sides agree in; the first is that the Spanish ship St Antonio a la Concepcion was taken by the Gally Trelawney and Sloop Security off of Cape Cartouch; the second, that she was brought into the Port of New York and there Condemned for the use of the Captors; the Third, that the Ship and Cargo and two Negroe Slaves were sold for Fourteen Thousand Four Hundred and Forty nine pounds current money of New York; the fourth, that the said sum was paid to Mess^{rs} Joseph Reade, William Axtell and James Depeyster agents for the Owners and Company of the said Privateers. The Defendants in their answer Deny the sloop Barrington to be a vessell of Warr not having a sufficient Number of Hands, that she was only a Tender and was sent with Provisions for the Fleet and had express orders not to speak to any vessell, but to make the best of her way to the Fleet.

The severall Depositions mention nothing of this, but by an exhibit of a Certificate from Admirall Knowles it appears that he Gave James Holburne orders to Command the Sloop Barrington Down on a Cruise in the months of May, June and July in the year 1748, between Cape Antonio and Cape Cartouch.

By which it appears that the Sloop Barrington was a man of Warr being sent on a Cruise by the Admirall of the Fleet and to suppose an Admirall of a Fleet would send a vessel on a Cruise for three Months without sufficient number of Men is to suppose what could not be attempted by a man of prudence.

It does not appear to me that the Cap^{ts} of the Privateers could know what orders Cap^t Holburne had from the Admirall. It is shown by the whole course of the evidence that the Cap^{ts} of the Privateers were not on

Board of the Barrington, nor Cap^t Holburne on Board of the Privateers, and it is very Improbable that Cap^t Holburne should have sent his orders or Copys of them for the Perusal of the Cap^{ts} of the Privateers, by which it seems clear to me they could not know what orders Cap^t Holburne had; and by Thomas Sparham's Deposition they could not be Loaded with Provisions because he Swears that she was very light, and that he heard one of the men say they were in want of Provisions.

At the time of the Capture of the Spanish Ship the Defendants say the Sloop Barrington was so far to Leward and so Deep Loaden she could not have come up with the Spanish Ship. Richard Lloyd in his Deposition says the Sloop Barrington was to Leward, but Jordan Collins Henry Mallebank William Rowland and George Tilsey swear the Sloop Barrington was to windward, but Thomas Sparham though very particular in some things does not know whether she was to windward or Leward. Indeed the Lybellant says he was to Leward when he first saw them; as to the Barrington's being Deep Loaden there are but two of the Depositions that mention anything about it. The one is Dr Sparhams, who swears she was Light and the other of Jordan Collins who swears she was in a Good Set of Ballast. There is something in Dr Sparhams evidence which is very extraordinary, he swears the Prize Ship struck to the Gally, but some of the Spaniards belonging to the Prize Ship Informed him that they had struck to the Sloop Security the night before; but that they would not suffer them to Board her. Whenever one Vessell strikes to another in an Engagement, they Give the battle over, and Submitt to the capture, so that if they would not Suffer the Sloop Securitys boat to Board them the Night before, it is plain they did not strike to her; and what convinces me that it was not so, [is] that the Defendants in their Answer

have not mentioned so material a Circumstance, which if true would have put the matter beyond all Dispute, and the Barrington then could not have had any Just Claim to any part of the Prize. William Rowland in his Deposition says they continued the Engagement till it was Dark, and that the next morning as soon as it was light the Gally and Sloop Security renewed the Engagement, yet he tells you a formal story of what the Spanish Boatswain said to the officer of the Barrington that was sent on Board of the Prize, that she was the sloop Securitys property, and that the Gally and the Barrington had no share in her,—having struck the night before to the Sloop Security.

There are some particular Circumstances attending this case that shew that the Cap^{ts} of the Privateers and their Companys did believe that the Barrington was Intituled to a Part of the prize, as being in sight. One of the circumstances is their pretending to say the Cap^t of the Barrington had express orders not to speak to any vessell, and that the Barrington was no man of Warr; there could be no use of their saying when Cap^t Holburne wished Cap^t Crispin Joy of his prize,—that it was not his Prize for she was taken the Night before by the Sloop Security. Neither could there be any use in telling of Cap^t Holburne they Intended to carry their Prize to Carolina, when they were Determined to carry her to New York, if the Barrington had not been a man of Warr. Besides if they had not been Conscious to themselves that the Barrington was Intituled to a part, they would not have refused an officer a Passage, to have him put in his Claim; because they must have known the Spanish Prisoners would have been the properest Evidences to prove whether the Barrington was in sight, and whether that Induced them to strike sooner than otherwise they would have Done. Had she not been intituled there could have been no use of tak-

ing all those precautions to prevent a Claim being put in.

As the Case appears to me by the Depositions [and] Exhibits the Defendant's answer and the behaviour of the Cap^{ts} of the Privateers after taking the Spanish Ship, it is plain they knew that if Cap^t Holburne had put in his Claim at the time the Prize was Lybelled it would have appeared he was Intituled to a Share. Therefore they refused to take any officer on board, to prevent his putting in any claim till the proper Evidences were Gone; upon the whole I think there is full proof that Cap^t Holburne is Intituled to one third part of the Prize Ship, the S^t Antonio a la Concepcion and her cargo.

June 26, 1752 Mr Reade Appeared & produced his Acc^t of the moneys which Remained in his hands at the time of the attachment served, and Ordered that the Lybellant fyle his Objections thereto within Eight Days. Mr. William Axtell also appeared and produced his Acc^t which the Court not Clearly understanding Order'd That he fyle a more Intelligable acc^t within Eight Days

(Libellants not arriving at a satisfactory settlement with the Garnishees, an independent libel was filed by Holburne against them on their stipulations, in order (as is conjectured) to increase costs. This proceeding was not decided until)

Jany 9, 1755 The judge gave his opinion in the words following viz^t

The Question before the Court upon which I am now to give my Opinion is how much of the sum of £4803 was Attached in the hands of Mess^{rs} Reade, Axtell and Depeyster. Cap^t Holburn's $\frac{1}{3}$ of the proceeds of the Prize Ship as per Mr. Reade's account amounts to the sum of £2,209.17.1 $\frac{3}{4}$. The money charged to John Howard and George Spencer (being wounded men) not

allowed. The wounded men are Certainly entituled to Receive a Share Extraordinary for being wounded, agreeable to their articles. But that extraordinary share is to be taken out of the prize money belonging to the Owners and Company of the said Privateer, and not out of Cap^t Holburn's $\frac{1}{3}$. Therefore the one Third of that money which amounts to £90.17.3 is to be Deemed money in Mr. Reade's hands. There is to be Deducted out of the sum of £2299.14.4 $\frac{3}{4}$ in Mr. Reade's hands the sum of £156.17.1, being $\frac{1}{3}$ of what Cap^t Frith bought, which never came to Mr. Reade's Hands, also the sum of £81.13.6 being what Mr. Reade shipt in account of the owners before Attachm^t served. Also the officers & mens share purchased amounting to £174.2.5. There then Remains in Mr. Reade's hands the sum of £1,886.16.4 $\frac{3}{4}$. Therefore I am of opinion that Mr. Joseph Reade Pay into the Court of Admiralty for the use of Captain Holburne and the Officers and Mariners of the sloop Barrington the Sum (aforesaid).

Mr. Axtell's Accounts are so confused, and his affairs have been Transacted in such a manner with Regard to the Prizes, That I conceive it would have been the most prudent step he could have taken to have finished the matter before it came into Court. But I shall endeavor to form the best Judgment I can from the Intricacy of them. In his first account he Acknowledges to have in his hands and Depeyster's the sum of £917.9.2 $\frac{1}{2}$ at the time of the Attachment Served. The five last articles of William Pearses account amounting to £128.19.4 $\frac{1}{2}$ paid by virtue of his Last Will and Testament,—as no person has a right to Receive that money but his Executors or Administrators,—it was money wrongfully paid, and the Law will Adjudge it money in Mr. Axtell's and Depeyster's hands. The money paid by Cap^t Edmonson and not charged (as appears by Mr. Reade's account) is £160 in his hands.

The three articles charged in page 26th of his account, amounting to £71.10.10½ is money in his hands. The money charged to be paid Mr. Livingston amounting to £70.5.7½ is money in his hands. In page 28 there is charged for goods bought by James Ramage The Sum of £684.17.9½ tho it appears by the vendue book, James Ramage had only £42.10. Then there must be in Axtell's hands the sum of £642.7.9. "To cash lent him with Interest for the same," amounting to £87.13.6 was money belonging to the Prise. He might have lent his own money, but had no right to lend that. Therefore it must be deemed money in his hands. Therefore I am of Opinion That there is in Axtell's and Depeyster's hands the severall sums above mentioned. Therefore I do adjudge and decree that they pay into the Court of Vice Admiralty for the use of Cap^t Holburne and the Officers and Marriners of the Sloop Barrington the sum of Two Thousand seventy eight Pounds fourteen shillings and four pence half penny,—Together with their share of the costs of suit awarded in this cause.

THE KING AGT JOHN BURGESS JEREMIAH LEACRAFT
& ABRAHAM MAN

Allegations of cruelty and inhumanity inflicted by privateers upon prisoners, not sustained.

(Respondents were captains of privateers; and this action by the Crown was based upon the Royal instructions to private vessels of war requiring proper care in respect of prisoners.

The cause was submitted to the Court by the Advocate-General without argument, on depositions taken out of Court before Philip Cortlandt, Esq.)

Dec. 22, 1748 This Court having fully considered the Proofs & Arguments in this Cause, the Judge Delivered his opinion in the words following viz^t I have

Considered the severall Depositions taken in this cause. By them it fully appears, That it was the Prisoners own Desire to be put on shoar. That the Captains of the Privateers stood in toward the Island of Hispaniola in order to Land them there, but seeing some French Men of Warr under the Island, that Design proved abortive. They then beat up to Turks Island in hopes to have Landed them there, but the Wind & Currents being strong against them, prevented their putting that Design in Execution. They then Resolved to bring them to this Port, but the Prisoners Rather than come here, Desired the Captains of the Privateer to spare them Boats, in order they might go on Shoar at Cape Francois on the Island of Hispaniola. The Captains accordingly Did spare them Boats, and gave them Provisions & Water sufficient to serve them. That they had three Boats which went away together, and kept each other Company. That the Privateer Parted with them in sight of the Caucasses,¹ the weather very moderate. That two of the Boats Did arrive safe at the Cape; that the Boat that stayed at the Caucasses was as large as any of the Rest, well found and as fitt to perform the voyage. So that their being obliged to stay on the Caucasses must be Oweing to their own Neglect and Carelessness, and not to the Cruelty Wickedness or Design of the Privateers. For by all the Depositions it is plain they Did their Duty and Treated the Prisoners with the greatest Humanity.

Therefore I am Clearly of Opinion they are not Guilty of what they are Charged with in the Information; and I Do Adjudge and Decree that they be Discharged from any further Prossecution on that account.

¹ Caucasses, *i.e.*, Caicos Keys.

CAPT LINUS KING AGT SCHOONER SAMBO ST FRERAS

An appeal will not be allowed after the statutory period for appeal has elapsed; but certified copies of proceedings will be furnished, in order that the intending appellant may seek such other relief as he may be advised.

A litigant succeeding by fraud may be resummoned into this Court, in order that the wrong may be redressed.

(The Spanish vessel above named having been adjudged lawful prize to libellant's privateer *Morning Star* on December 3, 1748,—no one appearing to contest the adjudication; on)

April 22 1749 The Petition of Manuel Joseph Dele Mar was Presented to this Court and Read suggesting among other things, That Cap^t Linus King his officers and company late of the Private vessel of warr the sloop Morning Starr on the second Day of October 1748 (new stile) about four miles to the North East of Saltertugas¹ had unlawfully Taken the Schooner Sambo St Freras and Lading and brought her to this port of New York, where she was Condemned as Lawfull prize, and that the said Linus King had brought with him only one Person, who could be a Legall Witness against the said schooner, the other being only the Petitioner's Cabbin Boy and not of Age to be a Legall witness in the Cause, and that the said Linus King had procured an Interpreter who was not only one of the sailors on Board his Privateer at the time of the Capture, but in all probability must have been Concerned in Interest in obtaining a sentence and Condemnation against the Petitioner's Schooner and therefore could not be a proper Person to act in that station, and the rather because there then was a person who had a Commission as Spanish Interpreter, and who used to act in that Quality was at that time in this City, and able to

¹ Saltertugas, *i.e.*, Dry Tortugas.

perform that Service, and praying an Appeal to be entered from the said Sentence of Condemnation to the Commissioners appointed under the Great Seal of Great Britain for Receiving hearing and Determining of appeals in Cases of Prizes, and also praying attested Copys of the proceedings of this affair may be Delivered to him; testifying that the Governours of Caracas and Puerto Rico and the principal Factor of the Royal Company of Guipuzcoano [came] into this Court.

Whereupon this Court having fully Considered the matter of the said Petition doth Declare that none of the allegations in the said Petition touching the Illegall Caption of the said schooner Sambo St Freras and Lading did appear to this Court, nor had this Court any manner of Information or Intimation thereof at or before the sentence of Condemnation; but on the Contrary by the Evidences then Produced, that the said schooner was Taken on the sixteenth day of September last (new stile) the said schooner and Lading appeared to this Court to be Lawfull prize; and as to that part of the Petition which asserts that a person who had been a Marriner on Board the sloop Morning Starr was appointed in the said Cause,—notwithstanding a person who had a Commission as Spanish Interpreter and used to act in that Quality was then in this City; this Court Declares that the Reason thereof was because the said Spanish Interpreter had sent notice to this Court that he could not attend at the time appointed for the taking the examination in that Cause, and the person then employed being the best Qualified for that Service that could then be found, and the Court then making the objection of his being concerned in Interest he Declared upon his Oath that he was to have no part share or Interest of anything taken in that Cruise, and the Court finding him wholly Indiffer-

ent did admitt him as Interpreter in this Cause, he being first sworn truly to Interpret the evidence in the Cause. And as to one of the witnesses being the Petitioner's Cabbin Boy and not of an age to be a witness, —this Court Declares that the witness objected to was a Lusty Lad and appeared to be about the age of Sixteen years, and as Capable of giving Direct and true answers to the Interrogatories exhibited as any Person whatsoever.

As to that part of the Prayer of the Petition that an appeal may be entered from the sentence in this Cause to the Commissioners, this Court Conceives itself not at Liberty so to do, the time Limited by the act of Parliament for allowing of an appeal being long since elapsed; but this Court is Nevertheless Willing to do everything in its Power that the Petitioner Desires. And does therefore Order that he have Copys of all the proceedings in the Cause against the said Schooner and Lading, and of his Petition to this Court Duly Certified under the seal thereof; and does also Order the process of this Court to Issue against the said Linus King and his officers to bring them into this Court to answer the Complaint of the petition; but as to this Court's Testifying that the Petitioner had Delivered into this Court the Instruments of the Governours of Caracas and Puerto Rico and the Principal Factor of the Royal Company of Guipuzcoano this Court can only testify that the Petitioner produced and Fyled in this Court sundry papers in the Spanish Tongue, which appears (by a Translation thereof by the Spanish Interpreter also produced) to be sundry Depositions Certified of the Illegal Caption of the aforesaid Schooner and Lading.

OWNERS AND COMPANY OF SLOOP RAINBOW AGT
SLOOP EXPERIENCE.

A vessel of war may give chase under any colors, for purposes of deception; she should attack only under her own.

The crew of a British vessel, thinking themselves attacked by a French privateer, left their ship, which was thereupon seized by the *Rainbow* (which had shown French colors only) and libelled as prize. *Held* that the ship so deserted was neither abandoned nor derelict, and was subject neither to condemnation nor salvage.

Suit begun in the name of a privateer captain, may on his death be continued in the names of his owners and company.

(Libel praying condemnation of the *Experience* as lawful prize to the *Rainbow*, or in the alternative for salvage on restoration to owners if shown by evidence to be British.

Mr. William Smith for libellants;

Messrs. Joseph Murray and Abraham Lodge for claimants.)

May 6, 1749 The Judge gave his Oppinion in the words following viz^t There have been a Great Many arguments made use of in this Case, to prove that the master had abandoned the vessel, by which means she was a Derilict, therefore became the property of the first occupant.

I take the sole Question before me to be, whether the master's Leaving the vessel in the manner he did, divested the owner of his Property by the Civil Law, the Law of Nations or by any other Law.

I shall in the first place Consider the severall Depositions taken in this cause; and in one thing they all agree, and that is that the sloop *Experience* was pursued by Cap^t Johnston in the sloop *Rainbow*, and by him taken and brought into this port.

The Depositions of Sutton and Marchant on the behalf of the Lybellants, and the Depositions of Nicholls and Daviss differ in the point of Colours; the first say the sloop *Experience* had no Colours spread when she was taken, the Latter say she had English

Colours Flying, and so had the schooner in Company with her. I don't think itt att all material in the Case, whether they had English Colours flying or not.

The Depositions of Nicholls and Daviss positively Declare that the sloop Experience was fired at by the sloop Rainbow under French Colours; that the Master and marriners Quitted the sloop Experience is agreed by both sides; and by the Master's protest with the oath of William Davis and Richard Loftus before the Notary Publick at Eden Town, Declare what Induced them to quitt the vessell viz^t that she was a French privateer. Now let us Consider what could Induce the Master and marriners to believe she was a French Privateer; the Inducement is plain,—by being fired at under French Colours upon an English Coast. For it is an established Rule on Board of Kings' Ships as well as privateers, always to engage under the proper Colours of the State they belong to, tho it is Customary to Chase under any Colours in order to Deceive; yet when they come to fire they Immediately Declare who they are, by Displaying their proper Colours.

Besides the people going on shoar, and abandoning the vessel (as the Case was Circumstanced) could be no Inducement to Capt Johnston to believe they were enemies; because they went on shoar in the King of Great Brittain's Dominions, which they never would have attempted had they been either Spaniards or French; besides Capt Johnston could have Ran no risque if he had sent his Boat on shoar, to enquire who the people were that had abandoned the vessel.

It is Clear to me that the Master and marriners Quitting the vessel did not or could not divest the Owner of his property; for by the Civil Law, a man's taking up anything off the Ground, with an Intent to Convert it to his own use (whether the Owner of the Goods be known or no) it abates nothing of pilfering;

but if the thing found proves a Derilict,—that is—Quite forsaken or cast away by the proprietor resolving never to own it more, some say it excuses. But by the Laws of the realm there is no forsaking; the Owner may Claim the Goods when he will, Notwithstanding all Rejectings or verbal Disclaimings; the property still Continuing the same. Indeed had the Master and marriners abandoned the vessel at sea, and she had afterwards been met with by Cap^t Johnston; in such a case, if he had brought her into port, he would have been Justly Intituled to salvage for his Care and Trouble. But as this Case is Circumstanced I can see no Reason the Captors should be Intituled to Salvage, because by an Illegal act of theirs, they obliged the marriners to Quitt the owners property; therefore they ought to Restore what they so unjustly became possessed of.

For which Reason I do adjudge and Decree that the Vallue of the sloop Experience and her Cargo be restored to Mr. Thomas Willett for the use of the owner Mr. Lewis Felleiteau, with the Costs and Charges by the said Lewis Felleiteau in that case sustained.

(This action had been begun in the name of the Captain of *Rainbow* at the date of alleged capture; subsequently)

Feby 2, 1748 Whereas it is Reported that William Johnson the Lybellant in this Cause was lately Murdered by some Spanish Negroes on his Passage from this Port to the Island of Jamaica, and Whereas this suit was Commenced & Carried on the name of the said William Johnson as well in his own Right as in the Right of Abraham Vanhorne, Peter Vanbrugh Livingston, John Beekman and Samuell Tingley the Owners, & also of the Company of the said Sloop, It is Therefore Ordered by Consent of the Advocates on both Sides that this Cause be Carried on in the names of the

Owners & Company of the Sloop Rainbow without any Advantage to be taken by either Party either by the Death of the said William Johnson or by not having him in the further proceedings in this Cause.

ARCHIBALD KENNEDY QUI TAM &C. AGT 96 PC^s OF SAIL
CLOTH & OTHER GOODS.

A cause heard on findings of arbitrators. Salvaged goods are not subject to condemnation or (*semble*) duty, even though importation would be illegal.

An award of one-eighth made upon goods taken at sea from a wreck; whereof one-half to the crew.

Embezzlement of salvaged property forfeits award.

(Libellant as Collector of Customs sued for the forfeiture of certain goods brought into port by the ship *Mary and Jane*, and said to have been saved from the sloop *Seaflower*,—encountered at sea in a sinking condition. Oliver DeLancey claimed the property and asked a hearing, on admitting the truth of the allegations of the libel. Thereupon the master and crew of the *Mary and Jane* intervened and prayed for salvage.

By agreement of counsel the ascertainment of the facts was referred to Messrs. Paul Richard, Gulian Verplanck and John Cruger or any two of them as “arbitrators.” Upon the coming in of their report the matter was decided without further argument.

The Advocate General for libellant;

Mr. Joseph Murray for DeLancey, claimant.

The salvors are not stated to have had counsel.)

Feb. 5, 1750 The Arbitrators to whom the Salvage and freight was referred having made their report to this Court, the Judge Delivered his Opinion in the words following viz^t These Goods I find were shipped in an English Bottom, for the Islands of St John and St Eustatia by some merchants in Amsterdam; but why they should employ an English vessel to carry Goods to a Danish and Dutch Island, when the Latter

are known to be the Cheapest Carriers in the world, I am not able to determine by anything I have seen. Indeed were they Intended for an English port, and that Colouring only made use of to Protect them from seizure, I think notwithstanding their being taken out of the vessel as she was foundering and brought by an English vessel into an English Port, they would be Justly Lyable to Confiscation; because there was a fraud originally Designed when the goods were shipped.

Indeed some of the Goods are such as cannot be Legally Imported, others of them may, upon being entered in England and paying the Duty; but the Question now before me is, whether these Goods not being Legally Imported are Lyable to Confiscation.

As the Case appears, by the several papers, the vessel was Chartered for St Johns and St Eustatia, a Danish and Dutch Port; By some merchants in Amsterdam, the Goods shipt on Board Consigned to a merchant there, and by the Protest of the Master and Mate before the Notary Publick here, it also appears that the vessel met with bad weather, lost her mast and sprung a Leak; that James Miller Commander of the Mary and Jane meeting with the vessel, and finding her in that Condition, at the request of the Capt^t of the vessel took all the People and part of the Goods on Board of his vessel, and being Bound to this Port, brought the Goods in here. This properly speaking, and according to the Laws of trade Cannot be called an Importation, within the meaning or Intention of these laws.

Suppose for example a vessel belonging to France or Spain and Laden with the produce and manufactures of those Countreys,—should by Extream bad weather, suffer great Damage, and put into an English Port to repair them; that could not be called an Impor-

tation, because the Person was forced into Port to save his Goods, and repair his Vessel; and in that Case the Laws of Nations as well as Hospitality, would oblige us to give him all the assistance in our power to preserve his property and put him in a Condition to go to the Port he was first designed for.

In this Case this man Cannot be said to have Imported these Goods at all, at least not according to the Meaning or Intention of the Laws of trade. It does not appear the master lost his mast and wrecked his vessel upon seeing the other vessel, that he might have his Goods safely Imported, for then he would have saved them all, if that had been his Intention. But it is plain when he found his vessel in that Condition, he took the only method in his power, to save the People and the Goods. It is true the master might have let them go to the Bottom, as well as saved them, but it can be no Difficult matter to Determine, which of the two ways a prudent man would have Chose.

Upon the whole I am Clearly of Oppinion the Goods are not Lyable to Confiscation, but belong to the first owners, they paying a Salvage. Therefore I do adjudge and Decree that the Goods be Delivered to Mr. Oliver DeLancey to be Disposed off for the benefit of the owners, he paying one eighth part of the Neat Value of all the said Goods taken out of the sloop Seaflower (Capt Simon Gross) to James Miller for the use of himself marriners and owners for Salvage, exclusive of costs; and that he also pay all the Costs that have already accrued in this case; and that one half part of the Salvage be for the use of the owners of the said ship Mary and Jane; and that the other half part thereof be for the use of the said James Miller and his marriners.

And thereupon Mr. Murray Proctor for Mr. Oliver DeLancey who claimed the said goods for and on be-

half of Messrs. Hopes of Amsterdam, acquainted this Court that he had Received Information and had Witnesses Ready to prove the same; that Sundry Goods which had been saved out of the sloop Seaflower, and had been Taken on Board the said ship Mary and Jane had been imbezzeled and privately sold by some Persons on Board off and belonging to the said ship Mary and Jane. And the aforesaid James Miller Master of the said ship Mary and Jane being present in Court Declared he was wholly Innocent of the aforesaid Imbezellment, and proposed and offered freely willingly and readily to attend this Court with every Person belonging to the said Ship at such time as the Court should appoint; to be examined upon Oath touching the same. Whereupon in his presence and by his consent it was Orderd that the said James Miller and all the Persons belonging to the said ship Mary and Jane attend this Court tomorrow at Two o'Clock in the afternoon at the House of the Widow Crawford, to be examined touching the said Imbezellment, and that no Salvage or freight be paid for the said Goods untill the same be fully enquired into.

Feb 6 1750 Pursuant to the order of yesterday the Judge and Register attended at the house of the Widow Crawford from two o'Clock in the afternoon till the evening in order to examine James Miller master of the Ship Mary and Jane and all the Persons belonging to the said Ship, touching the Imbezellment of sundry Goods saved out of the said sloop Seaflower; but neither the said James Miller nor any of the Persons belonging to the said Ship attended or appeared.

Feb. 9 1750 Mr. Murray Proctor for the Claimant informed this Court that James Miller with his Company on Board the said ship Mary and Jane sailed from this Port this morning, without Submitting to be examined relating to the Imbezellments of the Goods

saved out of the sloop Seaflower, according to the said James Miller's proposal; by means whereof the Claimants were Deprived of the benefitt of so full a Discovery as might have been made by the examination of him and his People touching the said Imbezelmments. However he moved that the Claimant might be at Liberty to have witnesses examined to prove so much as he can of the said Imbezelmments, which was Orderd accordingly, it appearing to this Court that the said James Miller with his Company on Board the said ship Mary and Jane Sailed from this Port this morning, without submitting to be examined as the said James Miller offered.

July 20 1750 Joseph Murray Esq^r Proctor for Mr DeLancey Claimant of the said goods for and on behalf of Messrs. Hopes, acquainted this Court that at the time he first applied to this Court upon account of the Imbezelmments of some of the goods Saved out of the sloop Sea Flower he had Received Information only of a small part of the Goods so Imbezeled, not amounting in value to near the sum that was ordered to be allowed for salvage; and as James Miller had proposed and offered freely willingly and Readily to attend this Court with every Person belonging to his Ship, to be examined upon Oath touching the same; he then did believe the same James Miller was Innocent of and no way privy to any of the Imbezelmments made, and was in hopes that he the said James Miller would have Complied with his said proposal, as the Doing thereof must have tended not only to the Clearing his own Character, but also to the Interest of his owners and himself, by enabling him to Deduct out of the Marriners wages the value of the Goods by them Imbezeled. But finding that the said James Miller neglected to Comply with his own offer and had sailed from hence with his said ship and marriners, after which new Dis-

coverys were made of other and further Imbezelmments of the Goods saved to a much Greater Value than the Salvage; which had they been Discovered before, would have enabled him to prosecute the said James Miller for the same, but as no other Remedy was left to enquire and lay properly before this Court an account of the said Imbezelmments, but to examine Witnesses relating to the same; wherefore Pursuant to the order of this Court of the ninth Day of February last, sundry witnesses were Examined; which proved the Imbezelmments of a Considerable Quantity of the said Goods by some persons on Board off and belonging to the said ship Mary and Jane, of which the said James Miller was Master; and that the said James Miller himself had offered to sale a Case of Tea which probably was part of the Goods by him taken out of the said sloop Sea Flower,—he not having Imported any Tea in his said ship Mary and Jane; as appears by his Report and Entry in the Custom House. And therefore Prayed that the said Goods saved and the Claimers thereof might be Discharged from the payment of any salvage.

An order was thereupon entered in the minutes that the goods claimed and DeLancey the claimant be “Discharged from the payment of any Salvage or Freight to the said James Miller or his Owners or Company or any other Persons whatsoever.”

EXECUTOR OF MICHAEL BEESLEY AGT SLOOP
FLYING FISH.

A cause heard by the Judge as arbitrator.

Semble a lien allowed for the amount of a bill of exchange taken up for the use of a vessel.

A surety held entitled to retain moneys of his principal until furnished with counter-security.

No costs allowed on the submission.

(Libellant asserted a lien upon the above sloop, (of what nature does not appear) and the same was sold by the Marshal on consent and order. Thereupon David Provoost and Richard Haddon intervened each *pro interesse suo* in the proceeds, and the cause was by consent "Referred to the Arbitration and finall Determination of Hon'ble Lewis Morris Esq^{re}."

Mr. William Smith for libellant;

Messrs. Benjamin Nicoll and Joseph Murray for other parties.)

Nov. 3, 1750 I do first find that there is Due to Mr. Provoost for moneys by him advanced for the said sloop, and by a Bill of Exchange Drawn payable to the owners of the said sloop (which he paid) the sum of Seventy two pounds fourteen shillings and three pence New York money.

I do also find by the accounts adjusted between the Owners of the Sloop Flying Fish and Cap^t Richard Haddon, That the Ballance due to Cap^t Haddon is five hundred and thirty two pounds five shillings and five pence half penny North Carolina money, which brought into New York money at Six hundred and Twenty five pounds per cent, is New York money Eighty five pounds three shillings and three pence.

I do also find that the said Richard Haddon hath Detained in his hands the sum of four thousand pounds Carolina money to Indempnifie him for Bonds he had Given for the like sum to prosecute an Appeal that he Carried from the Court of Vice Admiralty in Carolina to England; one third of which Sum was belonging to the owners of the Flying Fish. I am of oppinion that if the owners of the sloop Flying Fish will Give Cap^t Haddon sufficient security to Indemnifie him for their third of the Sum which he stands Bound for, that he shall pay them that money, which is Thirteen Hundred and thirty three pounds six shillings and eight pence Carolina money,—is in New York Currency two Hun-

dred and thirteen pounds six shillings and eight pence. But in case the Owners will not or do not forthwith Give sufficient Counter Security to Cap^t Haddon for Prosecuting the appeal as aforesaid,—I then order that Cap^t Haddon shall Receive his proportion of the eighty five pounds three shillings and three pence due to him from the sloop Flying Fish.

I do also find there is due to the Executors of Michael Beezley from the said sloop Flying Fish the sum of Two hundred and forty three pounds five shillings and four pence.

But as the neat amount of the Sales of the said Sloop amounts only to two Hundred and Sixty four pounds fourteen shillings and three pence, which will not be sufficient to pay the whole Demands, I do therefore Order and Decree that the Court Charges amounting to Forty Nine pounds thirteen shillings and three pence be first Deducted and paid out of the Neat Amount of the sales of the said Sloop, and the Remainder be paid to the severall Parties in proportion to their severall Debts, and that each of the parties pay their own Lawyers.

PATRICK FLOOD AGT SNOW HECTOR.

A seaman who engages for a voyage with a certain captain may leave the ship and collect wages to date of leaving, upon the owners' discharging without cause the captain who engaged the sailor.

(Libel for mariner's wages.

Mr. William Smith for libellant;

Mr. John Chambers for claimant.)

Dec. 18, 1750 The severall facts seem to be pretty well agreed between the parties; and those Controverted are made plain by the severall Depositions, and the whole matter appears to me in the following light: That Cap^t Fowel was appointed Master of the Snow

Hector at New York; To proceed a Voyage with the Snow from the Port of New York to Carolina and from thence to Cape Francois, and so back again to New York; that Cap^t Fowell on the Twenty second Day of November 1749 shiped Patrick Flood on Board the said Snow as a marriner at three pounds per month New York money; that he was shipped in the usual manner as seamen are shipped; that he received one Month's pay at New York; that he then proceeded with the said snow as far as the River Savanah, which Divides Carolina from the Colony of Georgia, and in that River on Board of Boats Delivered their Cargo, which was Carried to Savanah Town in Georgia; that Patrick Mackay owner of the Snow Hector, thought proper to Turn out Cap^t Fowell from being Master of the said Snow, and accordingly Discharged him from his Command the 7th of May 1750, and appointed another Master to perform the voyage to Cape Francois and so back to New York; that Patrick Flood absolutely refused to proceed the voyage, because that Cap^t Fowell that shipped him was Discharged, and another Master appointed.

Upon which these several Questions arise; Whether the going to Savanah River and Delivering the Cargo into Boats Changed the voyage? I am of oppinion it did not. Whether the owner had power to Turn the Master out and appoint another? I think an owner may turn a Master out, if he thinks he does not do his Duty, and appoint another Master in his place, tho I know it is Customary when a Master is shipped to perform a voyage, that he is seldom removed till the voyage be performed.

Whether the first Master being Turned out the Seamen Shipped by him are obliged to proceed the voyage with the new Master? I think they are not except they make a new agreement with the Master that is to proceed the voyage.

Whether they can Demand their wages (the first master being turned out) before the voyage is performed? I am of oppinion they can, and ought to Recover their wages to the time the Master was Discharged, with whom they shiped themselves.

I am of oppinion that Patrick Flood is Intituled to his wages from the twenty-second day of November (the time of his being shipped) untill the 7th day of may 1750 the Day Capt Fowell was Discharged; because his Declaring he would proceed with no other Master, when that Master was Discharged, Patrick Flood Discharged himself.

I am of oppinion that Mr. Patrick Mackay ought to pay the Costs of this suit, because the Tender said to be made to Patrick Flood of the Ballance Due to him for wages after he Discharged himself from the vessel,—does not appear to me to be a Legal Tender.

JAMES COX AGT TWO NEGROE MEN.

Salvage allowed on slaves, but (they not being prize) duty must be paid upon them.

May 4, 1751 The Petition of James Cox was presented to this Court and Read, setting forth that he sailed from the Island of Jamaica for this port of New York, and that in his passage at the Island of Heneago¹ he mett with and took off the said Island two Negro Men called by the names of Emanuel and Joseph; who he brought with him to this port of New York, where they are Desirous of being sold; and being willing to proceed in this matter with the utmost Caution prayed this Court to order the said two Negroe Men to be sold at Publick Vendue, and to allow the Petitioner his salvage out of the amount of them: and upon Reading the affidavits of William Bedlow and James Bunyan

¹ Heneago, *i.e.*, Inagua. Little Inagua is probably meant.

in support of the Facts alleaged in the said Petition it is Orderd That the Two Negroe Men in the said Petition mentioned, be forthwith sold at Publick Vendue to the Highest Bidders and that the acct of sale be returned into this Court with all convenient Expedition.

May 15, 1751 The Vendue Master returned that pursuant to the order of this Court of the Fourth Instant he had sold the negroe man named Emanuel to William Murray for forty six pounds, and the negro named Joseph to James Jauncey for forty six pounds, and that the charges of the sale amounted to Two pounds Ten shillings and six pence; and the same James Cox's Proctor Produced to this Court a receipt of Abraham Depeyster Esq^r Treasurer of this Colony for Eight pounds by him Received for the Colony Duty of the said Negroes, and prayed that after all Charges Deducted he might be allowed such Salvage as this Court should think fitt for the taking up and bringing away the said negroes, he being willing to pay the Remainder to owners of the said Negroes as soon as he can Discover the same: Whereupon It is Order'd and Deceerd by this Court that after Deducting the sum of Nine pounds eleven shillings and eight pence for the Judges Proctors and Registers fees out of the sum of Eighty one pounds nine shillings and six pence now in the hands of the said James Cox, the Remainder being Seventy one Pounds seventeen shillings be Divided into thirds, one third part for the use of the said James Cox and his Owners for the salvage of the said Negroes, and that the said James Cox pay one other third to the former owner of the said Negroe named Emanuell, and the other third part to the former owner of the said Negro named Joseph when they shall appear and make Good their Claims to the same.

SETH PLACE AGT THE LADING OF THE BRIG^T
ELIZABETH.

The genuineness of a written document ascertained in open Court by comparison with proven or agreed standards.

Where judgment is solely based on a finding of no lawful prize, appeal lies only to the Court having jurisdiction of prize appeals.

An agreement between English and French captains that the former would restore so much of the cargo on the latter's vessel as belonged to the French master, is unlawful and reprehensible, and prevents condemnation as prize of any cargo taken from or on such French ship.

(This libel was originally filed against the brigantine as well as her lading; both were claimed as prize. Whereupon Kennedy, Collector of Customs, intervened, denied lawful capture and alleged violation of Revenue Laws (*vide Kennedy vs the Elizabeth, ante*).

The vessel having been discharged, this litigation continued as to her cargo; to which Fabre the claimant of the *Elizabeth* seems either to have abandoned title or never to have asserted the same.

Mr. William Smith and Mr. Joseph Murray for Place;
Mr. Benjamin Nicoll for Kennedy.)

May 31 1751 The Judge Gave his oppinion in the words following viz^t There hath been a Great deal of pains taken to prove that the Commission granted to Cap^t Seth Place was Superseeded. Mr. Martin in his Deposition says it was Revoked or Superseeded; and he thinks Generall Matthews told him so, and Mr. Harrison in his Deposition says Seth Place told him he was served with a sort of Supersedeas by which it appears he was served with some Instrument to Revoke it, and perhaps it might be Sufficient to answer the End. But whether it was or was not I can form no Judgment, except I had seen the Supersedeas served upon him. But supposing the Commission to Cap^t Seth Place to be Good and authentick the Question is whether his taking Cap^t Fabre's vessell and effects was pursuant

to the Powers Granted by that Commission or not. It is not Denied by either side that Cap^t Seth Place was on a Trading Voyage, in a Loaden vessell Bound to some port in the West Indies; that the persons that went on Board of Cap^t Fabre's vessell with Cap^t Place, were not the men belonging to his vessell, but merchants and cap^{ts} of vessells belonging to New York. But I will put the case in the strongest light; suppose his vessell had been a Privateer fitted out in a warlike manner, and the Gentlemen that attended him when he went on Board of Cap^t Fabre's vessell were his officers and men,—whether the Methods they took were agreeable to the Laws of warr. I think they were not because it fully appears that when Cap^t Place and his Company went on Board of Cap^t Fabre's vessell, instead of taking Cap^t Fabre's effects as belonging to the subjects of the French King, they came to an agreement, in form Cap^t Fabre gave his obligation dated the 18th of Aprill 1748 to Deliver his vessell and Cargo to Cap^t Seth Place, upon which Cap^t Seth Place to shew he [had] not taken it from him gave him his note of hand, that in case he Delivers the Brigantine Elizabeth and Fifty four Hogsheads of Sugar to him Pursuant to his obligation of that Date, he should have his own Cargo consisting of such articles as in Seth Place's Note of hand is mentioned. Therefore so far from being a Capture Pursuant to the Laws of warr, it was a reciprocall agreement,—if you perform such a thing on your part, I will perform such another on my part.

Cap^t Fabre indeed acted in this case agreeable to the first Law of Nature (Self Preservation) for he knew by this agreement he should save his own effects; as for those of his Owners, they gave him Little Concern; and as it was Publickly known that he came with a Load of Sugars he Imagined if the Collector seized them he should not be able to make so Good a Bargain

for himself,—therefore of two evils he wisely chose the Least.

Therefore I am clearly of oppinion that Cap^t Seth Place's pretended Capture was no Capture at all, and amounts to no more than a private agreement between himself and Cap^t Fabre; and such an agreement with any other Person, without a Commission, would have been as authentick and could in no manner Invalidate the Collector's Seizure of the Goods. Therefore I do adjudge and Condemn the said Sugars or the amount of them Pursuant to the prayer of the Collector's Lybell.

Mr. Smith on the part and behalf of Seth Place and owners and company Prayed leave to appeal from the Sentence, and also for all Charges and Damages, &c.: which is Granted, &c. upon their Giving Security pursuant to the Directions of the act of Parliament.

(Subsequently a rehearing was applied for, whereupon:)

July 10 1751 Joseph Murray Esq^r one of the Proctors for Seth Place alleaged that the Copy of the Note from Seth Place to Bartholomew Fabre which was Read as evidence upon the hearing of these Causes, and upon which the Degree seemed to be chiefly founded, had not been duly nor sufficiently proved.

Upon hearing Mr. Benj^a Nicoll proctor for Archibald Kennedy Esq^r who affirmed that the same Copy had not only been duly and fully proved by Richard Durham, but that it was also proved by the Deposition of George Harison; that the said Seth Place had acknowledged to him that such a note had been Given by him. And he producing now the originall Note, which was Compared in Court with other papers agreed to be Signed by the proper handwriting of the said Seth Place, the Court was of oppinion that the said Copy was well and sufficiently proved and there-

fore dismissed the Motion for Rehearing the said Causes.

(Place then again prayed an appeal, but denied that such appeal lay to the Commissioners of Prize Appeals, because Kennedy had not asserted any right under the Prize Act but under the Revenue and Navigation Laws. On this point opinion was rendered,)

July 26 1751 It appears to me in all the proceedings in this case that Capt^t Seth Place claimed no right to any of the Goods but by a Capture he made of them Pursuant to a Commission Granted to him as Capt^t of the Privateer; that in his answer to Mr. Kennedy's Lybell he says Mr. Kennedy's seizure of those Goods were not Good because he had taken them before as prize, he being Impowered by his Commission so to do. Mr. Kennedy allowed he had a Commission, but that it was superseded, and the Judgment given in this Court was that she was no Capture at all. From this Judgment Seth Place appealed, for what end? The answer is plain, to get this Judgment Reversed. Who is to reverse it? The answer is as plain, the Commissioners appointed under the Great Seal of Great Britain for Receiving hearing and Determining Appeals in Cases of Prizes. And as this Case is circumstanced no other Person can Determine it. Suppose the appeal was to be to the King and Councill, or to any other Court besides the Commissioners for Determining Appeals in Cases of prizes. Then Capt^t Place would say, Mr. Kennedy's seizure was not Good, because he had taken those Goods as Lawfull prize before the seizure. Would not the King and Councill or the other Court very Justly say, you brought your appeal wrong. It should have been to the Commissioners for Prizes, for they be appointed to Determine whether she was Prize or no Prize; and they must have Dismissed the appeal,

had Seth Place Claimed those Goods by any other Right than that of taking them as Prize from his Majesties enemies.

Something more might be said with the regard to the method of appealing; but as Capt Place Claims no right but by that Capture, and this Court had adjudged it was not a Lawfull Capture, and to reverse that Judgment or Intitule Capt Place to those Goods they must be adjudged a Lawfull prize, and I conceive no Persons in England can Determine that point effectually but the Persons Legally appointed for that purpose,—therefore I am of oppinion that this case is not only within the meaning but the express words of the act of Parliament.

(No appeal was ever perfected. The matter was compromised with Jaspar Farmer (stipulator for Place), who held possession of the proceeds of the cargo.)

IN RE GOELET.

Practice stated upon the granting of a writ of restitution following the reversal of a decree of this Court.

(The condemnation as lawful prize of the *Arnoldus & Johannes* Galley and the *Maria Elizabeth* Galley having been reversed by the Commissioners for prize appeals)

Feb 21 1754 William Smith Esqr Produced to this Court the Memorial of Jacob Goelet with the several Papers in the said Memoriall mentioned Relating to the ship *Maria Elizabeth* Galley and Lading; and also the Memorial of the said Jacob Goelet and John Dies with the several Papers in that Memoriall mentioned Relating to the ship *Arnoldus* and *Johannes* Galley and Lading; which memorials on his motion were read and the same with the Writts of Restitution Ordered to be fyled. And thereupon the said William Smith

Esq^r prayed that the Bond of Messrs. Cruger and Watts mentioned in the Memorialls might be Delivered to the Memorialists. Cur. advisare vult.

March 2 1754 Upon motion of William Smith Esq^r and Consideration this day had of the memorial of Jacob Goelet and John Dies Ordered that the Bond entered into by Messrs. Cruger and Watts to Martin Kool be Delivered by the Register of this Court to the Memorialists. And that the Register enter in the Records of this Court the minute now agreed upon by all the Parties; and that upon payment of the Money in the Condition of the said Bond mentioned, that the same be Cancelled and Discharged.

(Subsequently and on April 10, 1754, Goelet and Dies personally appeared before the Court, and acknowledged satisfaction of the bond, while Cruger and Watts agreed to pay the costs of an order then formally entered cancelling the bonds in question.

Quaere whether (if Cruger and Watts had not promptly paid) suit would have been brought on the bond in Admiralty or at Law. The form of these documents cannot now be discovered.)

THOMAS WHITE AGT JOHN HALL.

THE KING AGT THOMAS WHITE.

A master may discipline a quarrelsome and abusive mate by confining him; but to limit his food to bread and water is unlawful.

(White was captain and Hall mate of a vessel not named. After the occurrences stated in the opinion, Hall procured the Advocate-General to file a libel against White for a fine; White sued Hall for exemplary damages by reason of the latter's mutinous insubordination. The causes were heard together.

Mr. William Kempe, Advocate-General, for the King and Hall;

Mr. William Livingston for White.

July 2 1754 In (White vs Hall) the Judge gave his opinion in the words following viz^t)

By all the Depositions in this Cause It clearly appears that John Hall during the whole voyage was quarrelling with the seamen; That he often beat & abused John Thomas and James Markham apprentices to the said Thomas White; and by the Depositions of Wallace, Bourin & Mood it appears that he struck Dennison a marriner on board of the said snow, at the time he was placed at the Helm by Cap^t Thomas White with orders to steer a Certain Course, because the said Dennison would not alter the Course, as he (the said Hall) Directed. This was an act for which he Deserved to be Punished, and I think Cap^t White was Right in Confining of him; tho I think the manner of doing it was not so. Neither ought he to have kept him upon Bread and Water. I am of opinion that John Hall by being confined has received part of his Punishment. Therefore I do adjudge and order that he be Discharged,—paying the costs that have accrued in this Case.

(In King vs White the following opinion was rendered:)

The Defendant not having put in any answer to the Lybell, it must be taken pro Confesso; and upon examining into the Circumstances of the matter it appears that the Defendant had just Cause to confine John Hall, but not in the manner he did it; nor to keep him upon Bread and Water. Therefore this Court does adjudge and order that the Defend^t Thomas White pay a fine to our Lord the King of five shillings with all the Costs of the Prosecution; and that upon Payment thereof he and his Security be Discharged.

ARCHIBALD KENNEDY QUI TAM &C. AGT 32 BARRELLS
&C. OF GUNPOWDER.

No statute gives to the Admiralty jurisdiction over seizures within the body of a County.

A plea to the jurisdiction is not permissible after final decree passed.

(The case was argued by
The Advocate-General for Kennedy;
Messrs. William Livingston and Benjamin Nicoll for claim-
ant.)

Aug 30 1754 The Case before the Court is whether the Admiralty hath Jurisdiction in this Cause. It is agreed by both sides that the seizure of the Gunpowder was made within the Body of the City and County of New York; and what the Lybellant Insists gives the Admiralty Jurisdiction is the statute of the 7th & 8th of Will. 3^d for preventing frauds and Regulating abuses in the Plantation Trade; in the seventh section of which act it is enacted that all the Penalties and forfeitures before mentioned &c. are to be Recovered in any of His Majesties Courts at Westminster or in the Kingdom of Ireland, or in the Court of Admiralty held in his Majesties Plantations Respectively where such Offence shall be Committeed, at the pleasure of the Officer or Informer.

The Claimants say the Statutes of the 13th and 15th of Richard 2^d take away all Jurisdiction from the Admiralty of Matters and Causes arising on the Land within the body of any County, which statutes are now in force, not being Repealed by any subsequent statute.

Let us Consider what the Design and Intention of the Act of Parliament of the 7th and 8th of King William is: By the Title & Preamble it appears to be for the preventing frauds and Regulating abuses in the Plantation Trade; and I conceive these frauds &

abuses may be Committed as well within the Admiralty Jurisdiction as within the Body of any County; & that appears by the act, because it is left to the pleasure of the Officer or Informer where he will prosecute the offence. But that pleasure must be Limited by the Law. That is if the fraud and abuse be Committed within the Body of the County it must be his pleasure to prosecute the offence in the Courts of Common Law. If Committed within the Admiralty Jurisdiction his pleasure must be to prosecute it in the Admiralty Court.

Whenever an Act of Parliament makes an offence, and is silent in the Manner of Trying it; it shall be Intended a Tryal Per Pais according to Magna Charta (Modern Cas. 99); but this act is not silent, but Points out where the offence shall be Tried; in Europe in his Majesties Courts of Westminster or in the Kingdom of Ireland; in the plantation in the Court of Admiralty, —if the offence be Committed within the Jurisdiction; if out of their Jurisdiction, in the Courts of Common Law.

A plea to the Jurisdiction after Judgment is too late, for although the Common Law Courts have done everything to Restrain the Admiralty Courts from exceeding their jurisdiction, yet they have Denied Prohibitions because applyed for after sentence, as may be seen in Finch's Reports fol. 8, Noys' Reports 67 & 70.

Upon the whole I am of opinion that the plea to the Jurisdiction is a good plea, and that the Admiralty hath no power to try the offence by the Act of the 7 and 8 of King William as this Case is Circumstanced; the seizure of the powder being made within the Body of the City and County of New York. But as to what Powder is already condemned the plea to the Jurisdiction is too late.

ANDREW GORDON AGT RICHARD BLAKE ET AL.

Passion, though occasioned by the heat of the climate, does not excuse a Master in striking seamen.

A Master's action for mutinous insubordination dismissed, and costs awarded against him.

July 4 1755 Mr. Benjⁿ Nicoll Proctor for the Defend^{ts} alleadged that Publication in this Cause had long since pass'd, & that this cause was ordered to be heard on the 18th of January last, and therefore Prayed that this Cause might be Immediately heard, which was order'd accordingly; and thereupon Mr. Nicoll opened the proceedings, and the Depositions being Read the Judge gave his opinion in the words following viz^t By the Depositions in this Case, I think it is plain that Blake, Scriggins & Monk did their Duty as seamen on Board of the sloop Ruby Commanded by Capt^t Andrew Gordon in this voyage to the Island of Curacoa. Neither do I see any Reason by the Depositions that Capt^t Gordon had to confine the said Blake in Prison at Curacoa. Whether the Captain being in a Passion with these People and striking Blake, was occasioned by the heat of the Climate, or by staying too long on Shoar that Night, does not appear by the Depositions. But upon Considering this Case it appears to me that Captain Gordon was to blame. Therefore I do Order & Decree that the said Richard Blake, John Scriggins & William Monk be Dismissed, and that Andrew Gordon pay all the Costs in this Cause.

CAPT JAMES CAMPBELL AGT SHIP CENTAUR.

A prize of war belongs to the Crown, and the captor's share is due to royal bounty.

Disposition of proceeds of a prize, taken before the King's pleasure is made known, must be delayed until the royal instructions are received.

(H. M. S. *Nightingale* under command of libellant captured

the French ship *Centaur* and filed this libel against ship and cargo. No claim was interposed.

Mr. Benjamin Nicoll for libellant;)

Aug 2 1756 This ship with her Lading &c. was, on the 27th of last month Lybelled in this Court as Prize, and the usual Proclamation being made on three severall days & Monitions served & affixed up & no Claimant appearing; I Order'd witnesses to be examined to prove the originall property & Legall Caption; which being done & Publication past and the Cause now being heard nothing Remains but the sentence. His Majestie having Declared Warr against the French King, the Lybellant in Pursuance thereof Did Attack & take the said ship *Centaur* & Lading which appears by all the witnesses was French Property, & therefore ought to be condemned as Prize.

But as I have Received no Orders or Instructions Relating to the Condemnation of prizes, know not whether his Majesty will be pleased to give the whole of such Prizes to the Captors or not. Therefore I Do Adjudge Sentence & Decree the said ship *Centaur* &c. as Lawfull Prize to be Divided in such Shares and for such uses, as his Majesty shall be pleased to direct and appoint.

THE SNOW SUSANNA.

Salvage may arise from any act beneficial to the thing salved; it does not necessarily depend upon the extraordinary acts of a stranger.

A claim *quantum meruit* may be a salvage.

Sixty pounds and costs allowed for services rendered at sea to a dismasted vessel.

(Captain John Pell on the Privateer *Mary* captured the *Susanna*, put a prize crew on board and ordered her to sail for New York. Heavy weather was encountered, and the *Susanna* in the condition set forth in opinion, fell in with John Stephen-

son commanding a vessel not named and from him received assistance. Stephenson intervened as a salvor in the prize proceedings.

Mr. William Smith, Jr. for the Mary;

Messrs. Richard Morris and William Livingston for Stephenson.)

Nov. 26 1756 The Question before the Court is whether Cap^t Stephenson be Intituled to a salvage for what he did towards the preserving the snow Susanna & her Cargo; or whether he be entituled to anything more than a Quantum Meruit for the services performed; or whether he hath not received a Quantum Meruit already.

It will be necessary for me in this Case to observe that when a vessell belonging to English subjects is taken by the enemy the property vests in the Captors, and there Remains untill she be Retaken; and when that happens the property Revests in the originall Owners, and the Salvage due to the Recaptors is ascertained by Act of Parliament according to the time she Remains in the enemy's Possession. But this claim of the originall Owners and the Salvage due to the Recaptors cannot be ascertained till she is brought into Court and Lybelled in a Court of Admiralty, where the Right to the vessell and Goods are to be proved to the Court, as well as the time she was in the enemy's Possession. If after the Recaption and before her arrivall into Port, she meets with Storms that Reduce her to the greatest streights, and she is Relieved and assisted by a vessell meeting of her at sea, whatever is paid for that assistance seems Reasonable that it should be Deducted out of the Value of the Vessell and Cargo before any Division made. As to the Demand of Cap^t Stephenson, there has been a great many arguments used that as this Case stands Circumstanced there can be no salvage due; but if anything is due it

can be only a Quantum Meruit. It is indeed advanced by one of the Gentlemen concern'd for the Recaptors that salvage is never due except there was an absolute loss to the owner without a subsequent Salvation of his property by some Extraordinary Hazardous or Expensive act by a Stranger or Strangers. Part of what is advanced is right, but I can very easily conceive that Salvage may be Justly due to one that is no Stranger without doing any extraordinary hazardous or expensive act: as suppose a Man finds Goods cast on Shoar on the Sand or lye in water a Cubit Deep, and he takes them up & Restores them to the Owner,—he will be Intituled to Salvage. I will agree with the Gentlemen on both sides of the Question that the greater the Expence & Hazard Run in saving another's Goods, the greater ought the salvage to be.

But in this Case of Capt Stevenson, tho I allow the expence was not great, yet the Danger the Susanna was in was great. She had lost all her Masts except her Formast, stove her water, lost her Compass, stove all her Cargo between Decks, her Stern and Bulkhead beat in, the marriners Disabled in the storm from doing their Duty when it was over; by which the French Prisoners became superior to the English Marriners. The snow [was] in the utmost Danger and the Capt in the utmost Confusion, as appears by his conduct when he met with Capt Stephenson; so that had he not met with him or some other vessell that could have afforded his assistance, in all human probability he never could have got into Port.

Capt Stephenson gave him all the Relief in his power; spared him half his water, a Compass a Top-saile, Raised Jury masts for him, took out two of the French Prisoners, in order to give the English the superiority on board of the Susanna, took her in Tow till the Hawser Broke; all which I think deserves a

Reward much greater than the Sugar & Rum given to the people. Whether you call it a Salvage or a Quantum Meruit is not of much Consequence. Upon the whole I do Adjudge and Decree That there be paid to Cap^t John Stephenson out of the whole Moneys the Snow Susanna & Cargo sold for, the sum of Sixty pounds Current Money of New York for the services he performed, and the Relief he gave to the Snow Susanna when he met her at Sea in Distress, with his Costs in this Case.

CAP^t THOMAS RANDALL AGT IL SANTO CHRISTO DE
BUENO VEAGO.

Where a vessel was claimed as Spanish, and proven to have had that nationality shortly before seizure, *held* that the burden was on the captors affirmatively to show French ownership.

Under circumstances of great suspicion *held*, as to the cargo, that such burden (if it ever existed) had shifted, and claimants, not showing Spanish or other friendly ownership, cargo condemned.

(Libellant as master of Privateer *Goldfinch* proceeded against the sloop above named, her cargo and a slave found on board. Francisco De Valle claimed and averred that all the property named in the libel was Spanish.

Messrs. Richard Morris and Benjamin Nicoll for libellant;
Messrs. William Smith, Jr. and William Livingston for
claimant.)

Jan. 4 1757 The Judge Delivered his opinion in the words following viz^t In cases of this kind the Method of forming a True Judgment must be from the papers found on board, and the Depositions of Persons no way Interested in the Event of the suit, when such proof can be come at, and there appears no fraud or colouring in the case. (Then) a Judgm^t may be Rightly and speedily formed; but when papers are concealed or Destroyed the Difficulty Lies in forming a true

Judgmt: wherever that is the case it must be formed by what appears to the Court all Circumstances Considered.

There appears two sets of Instructions; one signed by Monsieur Joseph De Aresa w^{ch} set are for Don Francisco De Valle on a voyage to Coro w^{ch} the s^d Cap^t obliges himself to comply with. The other sett are of the same Date, for the same Cap^t tho not signed, by w^{ch} he is ordered to go to Curacoa notwithstanding the Instructions he had already Rec^d; and it seems reasonable to think he went there before he sailed to Coro. These Instructions were Given in Jan^{ry} 1756 and their voyage performed (if performed at all) long before he sailed from St Domingo to Samana; therefore foreign to the Present Case,—except the Lybellants made use of them to shew to the Court that there was fraud Disigned by the owners in having two setts of Instructions of the same Date for Different voyages, & in one of them the Cap^t is obliged not to discover who are the owners of the vessel or cargo.

What appears to the Court in the Present Case is the Lycence from the Governor of St Domingo to the sloop Il Santo Christo to carry Labourers & a New Governor to Samana to make a Settlem^t there, & when they were Landed he might proceed to any Port in Friendship wth the Crown of Spain, & there he was to Load another sloop wth Provisions, for the use of St Domingo, by w^{ch} Licence he might have gone to any Port belonging to the English Dutch or French, as they were in friendship wth the Crown of Spain, & it is more than probable if he had not Particular orders from his owners he would have gone to that Port where he was most likely to succeed in getting provisions, but there appears no orders.

But if a vessel come out of a French Port Loaden with French produce, if they have no papers to show

who the Goods belong to, it shall be presumed they are French property. The fact is she did come from a French port loaden with the produce of that country. Now what appears very unaccountable is that they should have no Instructions from their owners on this voyage, and yet that they should be so particular in the two preceding voyages. By the Licence it appears she was to Load another sloop with Provisions, but there is no express orders in the Licence that the sloop *Il Santo Christo* should be Loaden wth Provisions; but by Implication (& it is Plain) the Cap^t did not think he was bound by them; by his takeing in Rum Sugar Indigo Coffee & Silver.

That they should grant Licences to their own vessel to saile to their own port, to carry their owne people to make Settlm^{ts} on their own Lands seems odd. That it is sometimes done appears in the present case, but that it is not commonly done appears, (for) that this very sloop in the former voyages she made to Curacoa & Coro, took no Lycence but only Instructions from the owner, and why they should take them in this case I can see no reason, but perhaps the owners might.

By the several Depositions taken in this case it is proved that the English, Dutch & Spaniards all trade with the French; the English trade disguised as Spaniards, & sometimes metamorphosed into dutch bottoms, w^{ch} hath always been Customary in time of war, when the French could not protect themselves with^t the assistance they Rec^d from us & their antient friends & allys the Dutch. Flags of Truce formerly were the disguise, but that disguise is worn so thin that it is too Easily seen Through and almost obsolete.

Some of the Depositions say that none but french vessels can carry off their owne produce; that may be true,—but that is to be understood in a publick maner. But when Liberty of Trade is obtained by Bribing the

Governer, it may be easely supposed without a Miracle, that the other officers become ipso facto blind.

I woud mention one thing that seems to be pretty strongly Insisted on by the Councill for the Reclaimant, & that is that it Lyes upon the Libellants to prove the property Claimed to be French. I allow it may in some Cases; as for example suppose a Private vessell of war mett a Dutch vessel, coming out of a French port, Loaden wth the produce of the Country, and the Dutch Capt produces his papers, by w^{ch} papers it appears they were Bona fide purchased by the Dutch; & the goods were their owne, & that they could find no papers concealed, nor prove any thrown overboard; yet if upon the Generall suspission of their being French Carriers in time of war she sends her into port; —there it will Lye upon the Captor to prove the goods to be French Property; & it will Lye upon the Reclaimants to prove the property is not French, and not [upon] the captors.

It is beyond all Dispute that a Dutch or Spanish vessell coming out of a french port Loaden with the produce of that Country; may take such papers as will fully shew to any vessell that have power to search them, to whom the property belongs; if they do not the presumption is strong against them.

There is a circumstance that would almost Induce the Coart to believe the property of the vessel was altered; & that is the Deposition of Capt Kossler who says he knew the sloop Il Santo Christo at St Domingo in August Last, when she was Bound to Cape Samana wth passengers: that he was Informed she belonged to Manuel De Aresa then residing at St Domingo; it appears by the Instructions given in the former voyages, she Belonged to him. Now as he gave no Instructions in this voyage, as None appears, it is more than Probable that he had Divested himself of his property in

the sloop; yet the circumstance is not such as does Convince me she is French Property; because he might have sold his Right to a Spaniard. Therefore I do adjudge and Decree that the sloop *Il Santo Christo* and one Negro slave on board of her is Spanish Property, and that she be Delivered to the Reclaimant; but that the Silver Sugar Rum Coffee & Indigo is French Property. Therefore I do adjudge and condemn them as Lawfull prise for the use of Cap^t Randall, the owners and Company of the sloop *Goldfinch*.¹

CAP^T THOS RANDALL ET AL AGT JOE BAYNE ET AL
NEGROES.

Respondents admitted to defend without stipulation and counsel assigned to them.

May 3, 1757 The Def^{dts} Petition Praying to be Admitted to Defend in Forma Pauperis and to have Counsel assigned them was Read & fyled and Ordered that they be at Liberty to Defend in Forma Pauperis and Assign Mr Benjamin Nicoll Proctor and Advocate for them.

(On May 5, Mr. Nicoll pleaded to the Jurisdiction, was upheld and the respondents were discharged.)

CAP^T JAMES SPILLAN AGT SLOOP LE BIEN FAISANT

Upon the evidence, *held* that the vessel proceeded against and her cargo belonged in reality to subjects of the King of France; and that ownership was concealed by and pursuant to a conspiracy formed by British subjects with Spaniards.

¹ On March 5, 1761, this case was reversed by the Commissioners, "In pain of captors not appearing" (Marsden, p. 207). Governor DeLancey on February 13, 1758, wrote to Pitt, Secretary of State for the Southern Department, that Judge Morris's decision in *Il Santo Christo* was "much complained of," but gives no reason for the dissatisfaction (*Correspondence of Pitt with Colonial Governors*, I, 181-182).

(Libel against above sloop as prize to the privateer *Hornet*.
Mr. James Duane for libellant.

To sloop or cargo no claim was presented.)

June 30, 1757 This Cause comeing on this day to be heard the Judge gave his opinion in the words following viz^t In Cases of this kind where a Trade is carrying on with his Majesties enemies Contrary to the Law, every step is taken to give it the most favourable colouring that is possible in order to Screen the undertaking from the punishment due to their crimes. The Methods Used in this Case were to Load the sloop Speedwell at Rhode Island, to put in an English Master & Seamen, who sailed with her to Monto Christo, a Spanish port; there they made a sham Bill of Sale to a Spanish priest, who changed her name from the Speedwell and Called her the Bien Faisant, and as an Instance of his great Regard to the originall Owners he made one John Boutin Cap^t & Supercargo of the Sloop, a person the English Captain brought with him for that purpose from Rhode Island. The Priest sends the sloop to Fort Dauphin, a French Port upon the Island of Hispaniola, where the Cargo was sold; and the Returns purchased by the said Boutin, and were to be Delivered to Cornell at Monto Christo; which is a farther Instance of the Spanish priest's Regard to the originall Owners.

But unluckily for the Spanish priest & Cap^t Cornell the Bien Faisant was taken by Cap^t Spellen before she got into the port at Monto Christo, and sent into this Port, where the whole Transaction fully appears by the Papers thrown overboard & taken up by Captain Spellen.

And the Depositions of John Boutin and one John Murphy, I have great Reason to believe have prevented the Originall Owners from Putting in their

Claime. But as it appears fully by the Depositions that John Boutin is a subject of the French King and that the effects on Board at the time of the Capture were French Effects, shipt on board at Fort Dauphin, a port belonging to the French King, I am Clearly of opinion she is French Property. Therefore the Court Does adjudge sentence & Decree the said sloop the *Bien Faisant* with her Boat &c. as Lawfull Prize for the use of the captors.

THE SANCTA MARIA
THE VROUW ANNA.

The destruction or concealment, by those on a captured ship, of papers which would probably cast light on the ownership of cargo, creates a strong presumption in favor of condemnation.

Destination to an enemy's port after clearance for a friendly one, creates such presumption against both vessel and cargo.

Two vessels and their cargoes, engaged on the same venture, *held* on the evidence to be French, though documented as Dutch.

An appeal duly taken entitles the appellant to a stay in the discretion of the Court. Twelve months allowed.

(Both vessels named were captured off and near the coast of Hispaniola, while endeavoring to make Port au Prince. Both produced Dutch papers. Search on the *Sancta Maria* discovered documents relating to the lading not only of that ship, but of the *Vrouw Anna*. The master of the latter vessel admitted on cross examination that when capture was inevitable he had thrown overboard, as no longer useful to him, contracts and other papers relating to his own cargo.

It was shown without contradiction that both ships were built in Holland, were at least ten and perhaps even fifteen years old, and sailed from Amsterdam in the latter part of 1757 with documents showing Dutch ownership and a clearance for Curaçao.

From the papers revealed by search on the *Sancta Maria*, it appeared that she had been chartered for the voyage out and back by her managing owners Lubely & Dewit of Amster-

dam to Jan Testas & Co. of the same City (also Dutch citizens) and that the charterers had made contract with Boutin & Desbrieres (French subjects) whereby the latter should procure for Testas French passports and permits enabling two Dutch vessels to enter and leave Port au Prince with cargo. M. le Compte de Conflans wrote to the Intendant of Santo Domingo that he had obtained from the Minister the licenses necessary to enable both vessels to trade in Port au Prince.

By authority of Testas, but apparently at the request of Boutin one Guillaume Papillon a French subject was made supercargo of both vessels, and sailed on the *Sancta Maria*. The captured papers showed that there was to be no freight due for the outward voyage of the *Maria* but that if when homeward bound the ship was lost or cargo captured, a lump sum was to be paid. Whether that sum would be sufficient to reimburse owners for loss of an old ship and its use was not shown. The consignee of cargo in Port au Prince was to have the right to purchase the outward cargo at European cost as per invoice, plus 150 per cent; and also to load for the return voyage, at specified rates to be effective if loss or capture was avoided. The invoices discovered were made out either to the captain or to Testas & Co.

Owing probably to the action of the *Anna's* captain in throwing papers overboard, the arrangements in respect of that vessel were not so fully shown. She was chartered to Texier & Co., also of Amsterdam, who seem to have made substantially the same bargain with Boutin as did Testas.

The masters of the two ships severally claimed their vessels and all the cargo that did not confessedly belong to Papillon, he having brought on board of at least the *Maria* some goods as to the ownership and origin of which the masters had no knowledge. The answers asserted everything claimed to be Dutch, admitted an intention to go to Hispaniola or Santo Domingo, declared a right so to do under Dutch law notwithstanding clearance for Curaçao, and also under existing treaties with Great Britain; provided (as was the case) the lading was not contraband of war.

Mr. William Livingston for libellants in both cases con-

tended that the evidence showed French ownership of both vessels and cargo.

Mr. Whitehead Hicks for the *Sancta Maria*, Mr. Benjamin Kissam for the *Vrouw Anna*, and Mr. John Morin Scott advocate for both vessels, denied such ownership to be shown either as to hulls or cargo, except in respect of Papillon's private venture.

He further alleged that neutral ships made free goods under treaties, especially that of 1674 between England and the States General, and claimed freight even if the goods were found French and condemned.

The contract with Boutin only meant that a Dutch charterer agreed to sell his Dutch cargo to a French buyer in a French colony if he succeeded in delivering it. This is lawful.

It appears by endorsement on claimants filed trial brief, that Mr. Livingston having heard his opponent's arguments, "refused to reply, and left it to the Court to determine on a perusal of the papers." Thereafter the Judge rendered his opinion in the *Sancta Maria*, as follows:)

June 17, 1758 In This case There is (1) coulouring in The Dutch Papers found at The time of The capture in Port au Prinz To be bound for curacao (2) a French Supercargo who grossly Prevaricates, who pretends To have been a Bare Passenger, conceals The Ship's True Destination and Seems Loth To Speak out what he could not be Ignorant of 3^{dly} a cap^t not Privy to nor acquainted with the Transaction Relating To The Property in The case 4th a Destination To a French Port (5) a concealment of Papers and (6) a consignment To a French Merchant at Hispaniola All which have been Thought Presumptive Proofs Sufficient in some cases for a condemnation.

Upon Examining The Papers which were concealed These Presumptions are Much Strengthened for There are Sundry Invoices of goods Sent from France by french Merchants To Testas and comp^y: The Pretended owners at Amsterdam To be Shipd for S^t Do-

mingo consigned To Papillon The Supercargoe none of which are Taken Notice of in The claim. Some Indeed of The concealed Papers Seem To have been contrived To render it Probable That The cargo belongs To Testas and Comp^y: but others of Them and Particularly The Instructions To Papillon convince me That Several French Subjects are Interested.

Count Conflans who seems To be The Principal Projector of This voyage expressly Declares in his Letter To Mon^r De Bart The French generale at Hispaniola That he is Interested in The cargo, and of This Boutins and La Portes Letters To The Intend^t of St Domingo are a strong confirmation: The Passport for The Ship under The french Kings own Hand Declares The cargo To be Merchandise of France: by This Instrument it appears That Security is given in Paris in 15000 Livres for The Payment of The usual French Duties and customs and The Performance of all The conditions Therein Mentioned

As She is Thus Intituled To all The Priviledges of a French Bottom, and would have free admittance in The French Ports I incline To consider her as Such and Do Therefore adjudge and condemn The Ship Sancta Maria her boat Tackle apparel furniture Lading and appurtenances as good and Lawful prize for The use of cap^t Little and cap^t Thompson in Behalf of Themselves and The owners and company of The Ship general Johnson and Snow Neptune in Such Proportions as Shal be hereafter agreed upon and I do also Decree That The claimant Pay To The Libellants Double costs To be Taxed.

(As to the *Vrouw Anna*, opinion was filed as follows:)

This is The Ship called Le Dame Anne in The french Papers at first concealed but afterwards Delivered up To me on oath, found on board The Sancta Maria

which I condemned a few Days Agoe. The Count De Conflans appears by The Papers in The case of The Sancta Maria to be principally conected in The cargoes of both Ships and Most of The Reasons That Induced me To give a Decree Against The Sancta Maria Demand The Like adjudication in This cause.

In That I was of oppinion That Testas and company Lent Their Names To Monsieur Conflans and others in order to conceal a French title To The cargo, and Now The title To This Lading Appears To be concealed under The Name of Texier and company of Amsterdam.

Among The concealed papers of The Sancta Maria I found two Invoices in The french Tongue: one of Sundry merchandise Dated 7th of Nov^{br} 1757 and Signed Charles Le Maitre at The head of which Invoice it is Said That They were Laden Simplement Pour La forme Sous Le Nom de *Mon^{sr} Jean Texier* but for Le Maitres own account and consigned To Papillon who appeared To be a French Merchant and Supercargo of The Lading of both Ships, So That There is Manifest coulouring as To These goods: and if Le Maitre is a Merchant of Amsterdam and a Subject To The Staates (which I very Much Doubt) I am at a Loss To account for This Invoice being found among The concealed papers, and The care That was Taken To cover them with Texiers Name.

The other Invoice is unsigned but Dated at Rouen in France The 30th of Sep^{tbr} 1757. The goods mentioned in it Doubtless belong To a French Subject They appear To have been Sent from Rouen to Texier and were consigned to M^r Papillon under The Mark of C. I. D To be Sold at S^t Marks.

Now where There is colouring with Respect To a Part of The cargoe pretended To belong to Texier of Amsterdam, on Such Presumptive Proof of a french

Interest in goods which by other Papers are Declared To belong To himself, I think it my Duty To condemn The whole; There being a want of clear consistant and unsuspicious Papers To shew The True proprietor To be an Alien Friend, and Every cargoe unfurnished with Such attestation I think ought To be condemned.

But There is another circumstance against This vessel and cargoe which raises a violent Presumption That The Enemy are Interessted some how or other and That is The Destruction of Some of her Papers: for No good Reason can be assigned for This Conduct upon The Supposition That They were only Evidence of a Neutral Interest, and he That will not Submit his Papers To The Examination of a court of Justice lays Such a foundation for a Presumption That he was conscious They would Shew The Property To be in The Kings Enemies as would alone be Sufficient To Expose vessell and cargo To condemnation, unless it could be Shewn by The clearest and Most convincing Evidence That The contents of Such concealed or Distroyed papers had no Relation To The Matters in Dispute, which is not Nor Indeed can Easily be Made out.

For These reasons Therefore as well as Those assigned for my Decree against The Sancta Maria I adjudge and condemn as Lawful Prize The Ship The Dame Ann or Vrow Anna with her boat Tackle furniture apparel and Lading for The use of cap^t Dixon The owners and company of The Private vessel of war The Prince of orange According To The Prayer of The Lybelt and That The claimant pay To the Lybellant Double costs to be Taxed.

(Thereupon the claimants gave notice of appeal, and on)

July 13, 1758 Mr William Livingston Proctor for the Appellate Prayed that a Reasonable time might be assigned for the Appellant to produce a Certificate to

the Court that his Appeal is Lodged with the Commissioners Appointed or to be Appointed under the Great Seal of Great Britain for Receiving hearing & Determining Appeals in Causes of Prize. Whereupon and upon hearing the Appellants Proctor it is Ordered that unless the Appellant produce a Certificate to this Court in Twelve Months from this day that the said Appeal is Lodged with the said Commissioners That the Appellate be at Liberty to proceed as if no Appeal had been entered.¹

(The *Vrouw Anna* was Affirmed July 19, 1760 (Marsden, p. 214).)

LE BON RENCONTRE.

A private vessel without letters of marque cannot take as lawful prize the ships of an enemy.

Captures at sea belong of right to the Crown; the rights of captors are but grants from the sovereign, expressed by statutes or royal patent.

Where the right of capture is admitted, but questions arise as to disposition of the prize, single costs only need be stipulated for.

There can be but one libellant in a prize cause; all other parties in interest must present their demands by claim and answer.

Even the great officers of the Crown must give stipulation for costs.

An answer and claim may be withdrawn, and by leave of Court be physically taken from the files.

One accused of contempt, opposing lawful process, may be proceeded against by libel.

A privateer cannot make prize by taking from other Englishmen their capture, even though such captors are for want of letters of marque unable to demand condemnation and enforce the same by judicial process.

An answer is not required to be on oath, and such pleading though verified is not evidence in respect of new matter therein stated, and not responsive to any allegation of the libel.

¹ This opinion is copied from Judge Morris's manuscript, not from the clerk's entry in the minutes, and exhibits very fully the writer's methods of spelling and use of capitals.

(The first step in this proceeding was the filing on the day after its date of the following "Judges Assignment.")

To Messrs. Benjamin Nicoll William Smith Jun^r and Richard Morris Council att Law.

Being informed by Elias Desbrosses of the City of New York Merchant, that there is lately arrived into this Port a French Snow taken by two English vessels who had, as is said, neither Letters of Mark nor any other Commission or Authority derived from his Majesty, for captivating the same, one of which said Vessels belongs to the said Elias Desbrosses, and the said Snow being in the custody of the Marshal of the Vice Admiralty in pursuance of my Warrant, issued upon Apprehension that the Lords of the Admiralty may have an interest in said Capture, and their Lordships having neither Proctor nor Advocates in this Court, I have thought proper to Assign you the Said Richard Morris Proctor, and you the said Benjamin Nicoll & William Smith Jun^r Advocates, to prosecute for my Lords Commissioners of the Admiralty against the said French Snow and her Lading if you upon examining the facts are of opinion that their Lordships have any Interest therein. Given under my Hand at New York this Sixth of April 1757.

Lewis Morris.

(By virtue of this authorization Mr. Morris filed on April 7th the libel of "The Honorable the Commissioners for Executing the Office of Lord High Admirall of Great Britain & Ireland ag^t The French Snow Bon Rencontre her Boats Guns Lading &c.")

The facts finally appearing without contradiction were, that the *Bon Rencontre* while on a trading voyage from Port Louis to Bordeaux, encountered on March 22, 1757 the English Ship *Maxwell*, Robert Etherington Master, and the Provincial Sloop *St Stephen* Richard Thomas Master, the latter

belonging to Desbrosses as above set forth, and both bound from Madeira to the Colonies.

None of these vessels had Letters of Marque, but the *Maxwell* according to the testimony from the *Bon Rencontre* opened fire, to which the French vessel replied; but upon observing the *St. Stephen* coming up, and taking her for a privateer, the *Snow* struck; received an English crew aboard, and came to New York, where she was anchored about a mile inside the Hook. On April 6 at 3 A. M. John Crew, Captain of the Privateer *Fox* of New York, came aboard from a small boat with a few men, and took possession from the English anchor watch. Whether the Marshal had a keeper aboard does not appear.

These occurrences becoming known to the Governor, Sir Charles Hardy, he instructed the Advocate-General to assert the right of the Crown in and to this capture against all and sundry.

The first default upon the Commissioners' libel having been taken on filing, on)

April 9 William Smith one of the Proctors of this Court brought into Court the Lybell of (John Crew on behalf of himself and the owners & company of the Sloop *Fox* vs the said *Snow* &c.) and moved that the same might be fyled & the usual Proclamations Made, which was opposed by the Proctor & Advocates appointed for the Hon^{ble} the Commissioners &c. who Alleadged that as they had before fyled their Lybell against the said *Snow* & Lading &c., the said John Crew if he had any right thereto ought to put in his Claim Conformable to the Directions of the Act of Parliament in that Case made &c. Cur. Advisare Vult.

(On this motion the Court filed the following opinion, on)

April 14, 1757 The Court having considered The arguments urged for and against The Motion for Rejecting The Libell of Capt Crew against the *Snow Bon Rencontre*, which had been previously Lybelled by The

Proctor and Advocates for The Hon^{ble} The Lords commissioners of The Admiralty;—is of oppinion; (first) That the point Relateing to The propriety of Interposing a second Lybell is Determinable only by The Late statute Relateing to the condemnation of Prises.

(2^{dly}) by That statute but Two kinds of Persons as contending Partys Relateing to Prises are Taken Notice of, (1) The captor, (2^d) The claimant.

To Determine who is The True captor is in fact a Determination of The case, and such Determination upon The merits, cannot be made till after Publication, and full hearing; but as The captor, as appears by the act, stands in opposition To The claimant, or other contending Partys; and certain Dutys are Injoyned upon both the one and the other Previous To The publication and hearing; it hence Evidently follows That The Court antecedent To The hearing, is to presume one of the partys, is to be The Person called in The statute *The captor*.

As soon as a Lybell is Preferred in a matter of Prise, the Presumption arises, and as no other Person but the Lybellant is Then in Court, he alone can fall under the character of The captor, mentioned in The act of Parliament; and whoever afterwards Interposes with a Demand of Right to the same Prise, must of consequence be what The statute calls him,—The *claimant*. If this Reason is Just, as I conceive it to be; Then The Lords commis^{rs} must be presumed to be the captor in The Present case; and Cap^t Crew *The claimant*; and as no claim is to be admitted except under The Restriction Prescribed by the statute, and this Lybell of Cap^t Crew's is Not upon oath, It ought Therefore To be Rejected.

(3^{dly}) what confirms me in These Sentiments is The consideration, that the statute appears to be made for Lessening of Expences in suits Relateing to Prises;

which Design will be Defeated by the admission of a variety of separate suits Relative to the same Prize; for it is evident that if This Lybell is Received, the Proceedings will be Doubled, and of consequence the costs; without any advantages for a clear discovery of the controverted Rights; nor do I conceive that any Injury can Accrue to The second Lybellant by this Determination; and I Do Therefore order that The second Lybell be Rejected.

(In obedience to this decision, on sundry dates on or before April 22d, the King appeared by William Kempe, Advocate-General; John Crew etc. by William Smith, and Robert Etherington by Jno Morin Scott, and each claimed the capture as against the Commissioners and each other.

The then Act regulating prize procedure required claimants of alleged prizes to give security for double costs; and such security was in the first instance given by Crew and Etherington; but no security at all was offered by the Commissioners. The Crown of course gave none. Mr. Smith for Crew, then moved that proceedings stay until the Commissioners should give security, and that Crew's stipulation be reduced to single costs; *semble* because this litigation was not over prize or no prize, but concerning the disposition of a capture not contemplated by the Act. As to this point:)

April 25, The Court is of Opinion that these Causes are not within the Meaning of the Statute, and therefore Ordered that the former stipulations for Double Costs be Discharged, on the Claimants stipulating with Security for Single Costs only.

May 27, Waddell Cunningham & Elias Desbrosses of the City of New York Merchants appeared in this Court & severally Stipulated to John Crew the Claimant in the sum of Forty Pounds On Condition that the Hon^{ble} the Commissioners of the Admiralty shall & do pay all such Costs as they shall be Ordered by this Court to pay in this Cause.

(Etherington's claim rested on the Assertion that the *Bon Rencontre* had attacked him first, and his successful resistance entitled him to prize money under 22 & 23 of Charles II, entitled "An Act to prevent the delivering up of Merchants ships &c.". Because *semble* it was impossible to prove this original effort on the part of the *Bon Rencontre* to capture the Maxwell,)

May 27, John Morine Scott Esq^r Proctor for [Etherington] alleadging that altho the said Claimant Conceived he had a good right to the said Snow & Lading, but being unwilling to Contend with our Lord the King or the Honble the Commissioners of the Admiralty, Prayed leave to withdraw his Claime to said Snow & Lading, which was Ordered and the said Claime withdrawn accordingly, & Ordered to be taken off the file & Delivered to the said John Morine Scott, which was delivered accordingly.

(The granting of this motion in effect relieved Etherington from costs, and all liability for the same.

The course of pleading in this matter, was regulated by the following agreement of counsel:)

May 7, 1757 To Save as much expence as Possible and to prevent Delay It is Order'd by and with the Consent of the severall parties, their Advocates & Proctors, That the Lybell and each of the Claimants in these causes shall be Deemed & taken to Assert their Rights severally to the said Snow & Lading, and to Deny any Right in the other parties or any other person whatsoever, without any advantage to be taken by any of the parties for want of such Answers Replications or Rejoynders; and that these Causes be now Deemed at Issue upon the several Facts asserted in the said Lybell & Claims as the Foundation of the Respective Rights of the Parties, and that every material Fact in the evidence, which might by the practice of

this Court have been Insisted on in the Answers Replications or Rejoynders that might have been made to the Respective Lybell & Claims be hereafter Considered as Traversed between the Respective parties; so that each of the parties be at Liberty to file Interrogatories and have their witnesses examined to the Respective Rights asserted in the said Lybell & Claims and after Publication the matters be heard and argued as if it were one Cause. But that nevertheless the Court in the meantime proceed to the hearing on the preparatory examinations as to the Originall property and the Caption of the said Snow & Lading; and to the Condemnation thereof for the use of the Legal Captors or those who upon the final hearing shall appear to the Court to have a Legal right to the same.

(Thereupon witnesses were examined in *preparatorio*, and from the French prisoners the facts of capture, and the circumstances attending Captain Crew's appearance on board the Snow were fully shown.

Crew's answer and claim asserted that having been informed that the Snow was "at or near Sandy Hook without the Province of New York, on the high seas," he proceeded to her with a boat's crew and "did set upon attack sieze & take the said Snow." It admitted that the Maxwell and St Stephen had once overcome the *Bon Rencontre*, but denied that they had brought her to New York, and asserted an intent on the part of Captain Etherington to convert the Snow to his own use secretly and without lawful condemnation; wherefore Crew pleaded that his seizure was for the purpose of bringing the French vessel before the Admiralty Court for lawful condemnation, for the benefit of himself and company and to the exclusion of the Crown and Commissioners.

Upon the preparatory evidence,)

June 1st 1757 The Court Does Adjudge Sentence & Decree the said Snow Lading & Negro Slave Philip as

Lawfull Prize, and that the same be Sold & Disposed off at Publick Vendue to the highest bidder for the use of such persons as shall hereafter appear to have a right to the same.

(Agents to conduct the sale having been moved for,)

June 2. 1757 The Court Does now appoint James Wardrup, Elias Desbrosses, Lewis Morris Junr & Charles Williams for that purpose; & order that they Severally Stipulate tomorrow with Security to the Register in the Sum of Fourteen Thousand pounds to make Report of the amount of the sales and to bring the Moneys they shall Respectively Receive into Court. Ordered also that the Marshall do Immediately Deliver over the Vessell, Negro, Lading & Appurtenances to the said Agents and that they pay him his Custody fees.

(The Marshal had apparently no keeper on board the *Bon Rencontre*, for)

June 4, 1757 The Marshall Complained to the Court That Pursuant to the order of this Court of the Second Instant, he went on Board the Snow Bon Rencontre to Deliver her to the agents appointed to sell and Dispose of her, & found one John Cane on Board, who withheld the possession of the said Snow against him, Notwithstanding he Informed him by what authority he came, and shewed him the Oar, the Badge of his Office as Marshall; which he the said John Cane with many Threats & Opprobrious language, Contemned, saying he knew what he was about as well as the persons that had sent him the Marshall; That he would not give up the possession; and as for the Oar the Badge of his Office, he might go and Play Cards with it, he did not Value it, and that the said John Cane did prevent him from executing the said Order.

Whereupon The Court Does Direct that the Advocate Generall file a Lybell and prosecute the said John Cane and Order that process Issue against the said John Cane in the meantime for the causes aforesaid.

(No such libel appears to have been filed, and the agents duly sold vessel &c., no further testimony having been taken.)

June 23 Mr. Morris Proctor for the Hon'ble Commissioners Moved That it does not appear by any of the Depositions that Capt^t John Crew ever took or Entered the said Snow Bon Rencontre, that his claim might be dismissed.

(This motion was argued by all the counsel heretofore mentioned, and also by Mr. William Livingston as Advocate for Captain Crew.)

July 14, 1757 After This vessel was Lybelled Several claims were Interposed Two of which are Still Depending, one by The advocate generale on The part of The crown, and another by cap^t crew on behalf of himself and The owners & company of The Privateer fox.

Severall witnesses have been Examined for The Privateer, and upon publication in Due form I was moved by The Proctor and advocates for The Lybellants and by The claimant for The crown, That The Privateers claim might be Dismissed: The proctor and advocate for The Privateer have been heard against That motion and The gentlemen concerned for The crown and The Lybellant have replied in support of Their Motion: and according To The course of Practice nothing now Remains but The oppinion of The Court.

It is agreed by all The partys Lybellants and Claimants That The originall property in This vessel her cargoe and appurtenances was in certain french Subjects and So I have Determined by a Late Interlocutory Decree.



Silver Oar of the Admiralty

ON THE DISSOLUTION OF THE COURT THE OAR PASSED INTO THE POSSESSION OF THE
LAST MARSHAL, THOMAS LUDLOW, JR. HIS DESCENDANTS ENTRUSTED IT TO THE
NEW YORK HISTORICAL SOCIETY, WHERE IT NOW REMAINS. A REPLICA GIVEN BY
JUDGE ADDISON BROWN IS KEPT BY THE CLERK OF THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK
LENGTH 20 IN. WEIGHT 47 OZ.

It is also admitted and proved That This Prize was overpowered at sea and brought in by The Two English Merchant vessels mentioned in The Lybell of my Lords commissioners of The Admiralty.

To whom The Prize in Such case belongs whether To the crown or The board of Admiralty or To any Privateers That might have Sailed [assailed?] her while she was in The Possession of The first captors, is a Question which by The Present Motion is not properly before me.

Nothing can be more Indisputable Than that it is absolutely Requisite, for The Support of a Privateers claim, That The crew Should in some Sort have been Instrumental in The capture.

The Most Sanguine Advocate for capt^t crew cannot Reasonably contend That any Proof of his takeing The Bon Rencontre Appears among The Depositions Taken in The case.

and Therefore The only Point controverted upon This Motion is whether That Defect in The Proofs is aided by his claim upon oath:

It is very certain That The answer of the Defend^{ts} according To The usage of The civil Law, is in some cases To be Taken for Truth Till Disproved by an overbalance of Testimony, capt^t crews council have Proved This general Doctrine, but it Does not appear To me To be applicable To The Present cases.

There Seems To be great reason That The oath of a Party should be conclusive unless Disproved where it is asked by his adversary, and I conceive It is in Such cases That The Civil Law gives credit To the Partys oath:

but capt^t crews claim can Legally Demand no Such Respect, for 1st The claim is in The Nature of a Lybell Demanding an Interest and not consisting in a Bare

Defence 2^{dly} It is voluntarily Interposed, and Might have been filed according To the Practice in This court, without oath 3^{dly} it is Impossible by witnesses To Disprove The facts it contains, and he holding the Affirmative, it was his Duty to Support Them, by proofs; Probatio Imponitur Ei, qui Allegatt, Negatio Autem Per rerum Naturam nulla Est Probatio, and according To The course of The civil Law, a voluntary oath of The party, is so far from being concluding Proof, That The answer Even of a Def^d Brought in by compulsory Process is Disregarded, where it relates To facts in Justification, Existing not Mearly in his own Knowledge; and capable of Proof; and This Distinction, from The cases cited in The arguments, appears To have Long Since obtained in The Court of chancery.

but I cannot help Entering so far into The Merits of cap^t crews claim as To Observe here, That if all his allegations had been Regularly Proved They do not appear To me Sufficient To give him a Title To This prise.

The crown is undoubtedly Interested in all Effects Taken from The Enemy by any Subject and The right of Subjects must be Derived from That Soarce; whether The Lybellants have a Title cannot be Determined without Inspecting Their Lordships Patent and Inquiring whether They have by any subsequent act Divested Themselves of Their Rights; but I am clear in My oppinion That Crews commission cannot warrant a Seizure of goods antecedently vested in The crown or The Subject, and Therefore am The More Inclined To Listen To this motion and Do Accordingly Adjudge and Decree That The Claims of cap^t crew on The Behalf of himself and The owners and company of The Sloop fox be Dismissed with costs To The libellants, To be Taxed.

(Crew gave notice of appeal and obtained a stay of eight months, but did not take up the Apostles. Judge Morris was several times moved to decide the question between King and Commissioners, but he, having evidently referred the point to England, filed the following)

Nov. 2, 1759 As To The Right to The Produce of the Sales of this Prize, I am Still in Doubt whether it is in The crown or The Libellants: I have communicated an account of the capture and The Proceedings in this court Relateing to it to the Admiralty Board in severall letters To their Lordships of the 21st of Aprill 16th of June and 3^d of August in The year 1757 and Therein Prayed Some Necessary Information to be transmitted to me for clearing up Difficulties and as I have Received no answer To Those Letters I have written in a Pressing demand on The 18th of October Last To My Lord who is at The head of the Admiralty Board and as I have sent Duplicates of That Letter and have the honour to be Personally known To his Lordship I Expect Shortly To Receive such Information as will Enable me to make a Disposition & Sentence in The cause and I therefore order That in the meantime That There be an Entry Made That The court will advise.

(Judge Lewis Morris died in 1762 without giving any final Decree. In 1763, Mr. Richard Morris having succeeded as Judge, Mr. Nicoll and Mr. William Kempe having died, and Mr. William Smith having retired to the Supreme Court, Mr. John Taber Kempe, Advocate-General, petitioned for sentence, urging that whatever rights the Commissioners might have had under their patent from George II, the same had terminated by the demise of the Crown in 1760, and George III was plainly entitled to the proceeds of sale. After argument Richard Morris, J. gave judgment August 10, 1764, but it was not spread upon the minutes, and the original has disappeared from the files.)

RICHARD HADDON ET AL AGT 10 DOUBLOONS &C.

No one can claim *in rem*, without showing title to or interest in the *res*. Even the Sovereign cannot claim on behalf of a subject, merely by reason of the Crown's interest in justice and the orderly conduct of society.

(On March 9, 1757, Haddon filed libel as Captain of the Privateer Schooner *Peggy*, claiming as prize a quantity of foreign coin, some jewelry, arms, powder and indigo, producing on sale £2409.4.11¾.

The libel alleged that on December 7, 1756, he "did meet with, set upon and take a certain schooner belonging to subjects of the French King." The name of the captured vessel was not given. But it was alleged that "the said schooner being unfit to come upon a winter's coast" and Haddon having a great number of prisoners he "delivered (the schooner) to a number of them to carry them to some French port after taking out of her the said money, goods and chattels."

After due proclamation no claimant appeared, and libellant took the deposition of Francisco Raphe, who stated that he was twenty-six years old, a native of Greece, a sailor and a subject of the Grand Turk. That two days after the vessel he was on board of sailed out of Cuba they were taken by Captain Haddon. He did not know the name of the vessel for she had no regular Commander, no despatches or papers of any kind from any port or place. He believed that "had said vessel been taken by any vessel of any nation she would have been a lawful prize, and had she been taken by a Spanish Guarda Costa, the whole ship's crew would have been hanged as pirates. That there were on board of all nations almost, as Genoese, French and others, in numbers twenty two, and that one of the chief in particular was a Frenchman subject to the French King. That he knows no further to declare in relation to any other interrogatories but only that he absolutely from all the knowledge he can form thinks her to be a just and lawful prize."

Upon this testimony alone decree was given condemning the property in question as lawful prize, but with the following proviso:)

Mch 31, 1757 Provided that no Just and Rightful Claime be made to the same by any other person or persons within a Year & a day. and Ordered That the Lybellant Stipulate with Security to the Register of this Court in the Amount of the said Gold Silver & other things to bring the said Amount into this Court when the Court shall order the Same within a year & day as aforesaid.

(Before the expiration of the time limited there arrived in New York one Philip y Bannes, otherwise known as Philip Vanes or Philip De Francis or De Francais; with letters to Governor DeLancey from especially Earl Holderness, the Secretary of State. This man persuaded the Governor that he was a Spaniard by birth, a resident of Havana and the owner of the schooner *El Virgin del Rosario y El Sancto Christo de Buen Viage*, and had been on board his schooner when Captain Haddon set upon her not far from the Isle of Pines and with brutal violence took the money etc. in question from him and many others on board.

That he was then upon a voyage from Havana to Jamaica under charter to an Englishman, one Caleb David, engaging to convey two other British subjects Henry Meyerhoffer and William Abbot to Jamaica. That he was duly provided with passports authorizing the trip, and exhibited them to libellant, but no attention was paid thereto.

That Haddon's Lieutenant and men had searched even the clothing of Y'Bannes and others, robbed them of everything easily portable, had taken Meyerhoffer on board the *Peggy* and then permitted the schooner to proceed, refusing any explanation, or receipt for what was taken.

That the *Peggy* had then gone to Lucea at the western end of Jamaica, and there landed Meyerhoffer, in such plight that he was obliged to walk to Kingston.

That the deposition of Raphe was false *in toto*, in that no such man was aboard, and that every member of the schooner's company was a Spaniard.

Y'Bannes had told his story to Vice-Admiral Townshend

at Jamaica, Meyerhoffer supporting him; the authorities at Havana had complained to Lord Holderness through the Spanish Ambassador, and Governor DeLancey received orders from England to assist Y'Bannes.

After laying the matter before the Council the Governor acted by directing Mr. William Kempe, Advocate-General to take such steps as to him seemed good.

Accordingly on or about March 10, 1758, Mr. Kempe filed a claim in the name of the King, for the use and benefit of Y'Bannes setting forth the facts above related, and attaching to the documents copies of David's charter party and an affidavit of Meyerhoffer.

On April 5th, and after the time limited for claims had expired, Haddon and one stipulator Thomas Miller, together with Mary Farmer, executrix of Jasper Farmer the other stipulator (deceased), appeared: and by Richard Morris, Proctor, and Benjamin Nicoll and William Smith, Jun^r Advocates, demurred to the claim and assigned as cause:

(1) That the property claimed did not belong to the Crown but to a Spanish subject.

(2) That the King cannot sue for a private person and thereby deprive his own subject of costs.

(3) That a decree in this case in favor of the King would not bar an action upon Haddon's bond for good behaviour as a privateer.

(4) That no subject is answerable to the King for an injury done another subject except by a criminal prosecution.

(5) That a claim by the King would not bar a claim by Y'Bannes.

(6) That there was a misjoinder of parties claimant.

The Court sustained this demurrer without opinion so far as known, and from this decision no appeal was ever taken by the Advocate-General.)

PHILIP Y' BANNES AGT £2409 &C.

No court can reverse its own decree.

A stipulation to answer any claim advanced within a time limited cannot be enforced after the expiration of such time.

The reversal of decree not appealed from does not affect proceed-

ings in another cause, though an appeal was therein taken, and it seems probable that it was the intent of the Appellate Court to annul all proceedings in both causes.

(From the record in *Haddon vs 10 Doubloons (supra)* it is evident that Y'Bannes never became a party in that action. At least two months after the rejection of the King's intervention in his behalf, he filed an independent libel setting forth the circumstances detailed in the claim of the Crown in Haddon's suit; prayed the process of the Court against the £2409.4.11 $\frac{3}{4}$ secured to be paid by the stipulation of Miller and Farmer, and demanded damages from Haddon for all the loss and expense caused by the latter's wrongful acts.

In so far as the suit was *in personam* against Haddon there is no evidence that process was ever served; at least one citation was returned "not found." In respect of the sum secured by stipulation:)

Sept 27, 1758 Ordered that an attachment issue against the said money in the hands of Thomas Miller in his own name & right, and of Mary Farmer widow and the said Thomas Miller Executors of the Last Will & Testament of Jasper Farmer deceased.

Oct 7, The marshall returned that he had attached Two thousand four hundred and nine pounds four shillings and eleven pence three farthings in the hands of Thomas Miller & Mary Farmer; & on motion of Wm Smith Esqr proclamation was three times made for any person to appear that had aught to say why the prayer of the Lybellants petition should not be granted to come forth & they should be heard.

Whereupon on motion of Mr. William Smith the younger ordered that Richard Haddon be admitted clait, and at the same time Messrs. Gerrit G. Beekman & Thomas Miller of the City of New York merchants appeared in this Court & submitted to the Jurisdiction thereof, & severally stipulated to the Lybellant in the sum of two thousand four hundred & nine pounds four

shillings & eleven pence three farthings current money of New York, on condition that in case the sentence & Decree of this court shall be given in favor of the Lybellant in this Cause that then the said Gerrit G. Beekman & Thomas Miller shall & will severally pay in this Cause the said sum, & they further stipulate in one hundred and fifty pounds & To the Lybellant on Condition to pay all such costs as this court shall order the Claimant to pay in this cause. Motion to answer in eight days.

Nov 25, William Smith Esq^r Proctor for the Lybellant (moved) that the Lybell be taken *pro confesso*, no answer being put in by Richard Haddon.

(Haddon never answered, and *semble* that for lack of service, decree against Haddon could only dismiss his claim to the attached fund. Miller and Farmer however had, on October 27th, offered a demurrer to Y'Bannes' libel, describing themselves as "defendants.")

This pleading set forth that libellant, "had been in this City of New York & might have Interposed his Claim, but these Defendants are Advised that the Sentence of this Honourable Court against the said Monies Goods & Effects, on the Second day of Aprill Last Past was Compleat and without Condition; and that the Stipulation to bring in the Said Monies Goods & Effects was void from the Condition thereof, no Rightfull Claim being Interposed within a Year & a Day.

"To which and all other matters in the said Lybell or Claim mentioned, these Defendants do Demur in Law, and do Sett down to this Honourable Court the following Reasons Therefore to wit: first for that this Honourable Court Cannot Reverse its own Sentences. Secondly for that Should it Reverse its Sentence, and Decree for the said Phillip Y Banes, it Cannot Enforce that Decree, the Stipulation being Void"

Upon this issue argument was had, by
Richard Morris, Benjamin Nicoll & Wm Smith Jun^r for
demurrants;
William Smith & James Duane for libellant.)

Feb 10, 1759 The Court delivered the following opinion: I have considered the Lybell and claim of Phillip Y'Banes, and should be very willing to do anything in my power to enable him to get the justice he demands, and says he has a right to expect, as being a subject of his catholick majesty; but in what manner I can do what he prays for in his Lybell does not appear to me; he sets forth that part of the money goods and effects that were taken from him by Richard Haddon, who is the person he complains against for the Injustice done him, amounting to £2,409.4.11¾ were formerly Lybelled in this court as prize by the said Richard Haddon; that in consequence of that Lybell a decree was made in this Court whereby the said goods money and effects mentioned in the Lybell were condemned as Lawfull prize, for the use of the captors: provided no Lawfull claim was made for the same within a year and a day; and thereupon a stipulation was taken to bring the money into court in a year and a day when the court should order the same. This sentence its Alleadged in the Lybell past on the thirty first day of March 1757; & the Lybell & claim now before the court was not filed till the 27th Sep^r 1758; so that a year and a half elapsed after the sentence passed, before any Lawfull claim was made; the sentence therefore of this court by which the money goods & effects then Lybelled & now claimed were condemned as prize was in full force and effect, near six months before the now claim made by the Lybellant; and the stipulations taken by the Court to bring in the money within the year & day is by this means become void. Supposing therefore the court had a power of annulling its own decrees after they are executed (which I can't but doubt in proceedings grounded on the act of parliament relating to prizes) yet as the Court has no security bound to bring this money into the court, I see not at present any step

that can be taken by this court, as this cause is circumstanced, that can give the claimant the relief he prays. I am therefore of opinion that the demurrer of Thomas Miller and Mary Farmer the executors for bringing in the money into court must be allowed, & they dismissed as their stipulation appears from the Lybell itself is become void, & that the decree by which the goods and effects Lybelled by Haddon were condemned as prize must stand until that sentence is reversed by a Court having proper jurisdiction & power to reverse it. As to the residue of the goods & effects charged to be taken from the Lybellant by the said Richard Haddon, as they have not been Lybelled in this court nor any answer is given to the Lybell by the said Richard Haddon, I am of opinion that the Lybellant be at liberty to proceed against the said Richard Haddon, as to the same according to the usual course of this court.

(On February 17th, 1759, Mr. Smith for Y'Bannes filed a "Notice of An Appeal," entitled in this cause signed by himself and reading as follows.)

"The Lybellant in this action appeals from the Sentence of this Court to the Lords Commissioners of Prizes: and prays that his Appeal may be received, and that Apostils may be made, pursuant to his said appeal, and is ready to give in security as the Court shall order" &c.

(On March 14th the minutes recite under the same caption that Mr Smith "brought this appeal into Court" and produced stipulators for costs on appeal. No draft Apostles remain on file but it is evident from subsequent affidavits &c. that the record as made up consisted not only of filed papers & minutes entitled in this cause, but of all papers "referred to in" the libel, & thus included all the proceedings in *Haddon vs 10 Doubloons*.

It is also evident from the report of Appeal in Marsden, p.

185, that the Commissioners considered that the whole matter was before them.¹

The order or decree of the Commissioners is reported by Marsden in substantially the words of a document placed on file by Y'Bannes, as a "Copy of the Sentence of the Lords of Appeal." This copy is signed by the "Register of his Majestys high Court of Appeals for Prizes," but is neither sealed, exemplified or otherwise attested. It is as follows.)

Dec. 19, 1760 "Their Lordships having heard the Proofs and Council on Both Sides declared that it Appears to their Lordships that upon the Case laid before the Judge below by the Respondent himself, the Capture of the Effects in Question ought to have been deemed Piratical, that the Respondent ought to have been prosecuted for the same, and the Effects secured, and that the Proceedings were Irregular and Illegal, and the Sentence of Condemnation of the 31st March 1757 appealed from Unjust and Warranted by no Collour of Proof. Therefore their Lordships by their Final Decree or Sentence Reversed the Same and Decree the Ten Doubloons (&c) to be Restored or the Value thereof to be paid to the Claimant, and Condemned the Captor in Costs and Damages. And their Lordships are of opinion that the Governor of New York Ought to Cause the Bond Given by the Captain of the Privateer to be put in Suite and apply the Penalty for the Benefit of the Claimant."

(On June 5, 1761, Mr. Duane produced to the Court this Copy of Sentence, a memorial from Y'Bannes setting forth formally the fact of reversal, and the writ of Restitution (which has disappeared) and on June 17 Mr. Smith moved on

¹ There is no record in the Vice Admiralty of any Prize Appeal having been heard by any other Commissioners than those enumerated in the Extract from minutes printed in the Appendix. The professional rating of the Appellate Court certainly required Mansfield to produce even a fair average.

the record that the Stipulations given under the attachment by Miller & Farmer (Gerrit G. Beekman and Thomas Miller stipulators) be put in suit; or that execution issue against them. Mr. Smith, Jr. opposed this, and after argument on subsequent days, the Court rendered opinion)

July 4, 1761 The judge delivered his Decree in answer to the memorials as follows viz^t I have considered the motion of last week for an order that Beekman and Miller be taken into execution, and cannot think that method of proceeding will be legal. Those persons stipulated as Bail to bring in moneys Attached on a Libel instituted by Phillip y' Banes if the court should so decree, but the sentence was against the Libell^t, and that the stipulation should be discharged, and no proof being made that that sentence is reversed, it does not appear to me that the Bail are subject to the power of this court. I cannot repeal my own Decree. The sentence reversed by the Lords of Appeal is that of the 31st March 1757 condemning the Goods bro't in by Haddon as prize; & of that I don't think proper proof is exhibited, for instead of an exemplification of their Lordships final sentence under seal, a paper said to be a certified Extract from the Registry of that Court is produced. The Reversal of the sentence ag't the Goods is no reversal of that upon Y'Banes's Libel, nor does it appear that the moneys Attached were the produce of the Goods condemned. I am very willing to aid the memorialist in carrying the sentence of Reversal into Execution, in any method which his Council can devise consistent with Law and Justice. But to proceed by execution against Bail discharged by a sentence unreversed (for aught any proof as yet produced) cannot be right. I am very suspicious that the appellant's agents in England are either blamable in conducting his Cause there, or negligent in the trans-

mission of the proofs of what has been done; as the matter stands before me it seems that the sentence from which he did not appeal is reversed, while that which he appealed from remains in full force.

(Thereupon Y'Bannes presented another memorial setting forth at great length that it was the evident intent of the Appellate Court to reverse all decrees or orders inconsistent with their conclusion, that the only existing stipulation was that of Beekman and Miller, that such obligation was merely to answer for Miller and Farmer, who had stipulated in the original cause wherein decree was entered March 31, 1757, and that as the latter were clearly liable, therefore their stipulators should also be held.

On this petition the Court filed opinion)

July 26 On motion of Mr. Duane the judge gave the following sentence viz^t I have considered the last memorial of Phillip y Bannes and cannot be of opinion that the objections to an execution against Beekman and Miller are yet removed. The sentence of the 31st March on Haddon's Libel was the last act of my power as Judge of that cause. The sentence on Y'Bannes Libel put an end to my authority over the parties in that Cause. They are separate and distinct suits & therefore the Reversal of one sentence cannot be the reversal of the other. The appeal was in the latter Cause, and if I should proceed in it according to the memorialists prayer, I shall not only disobey the Inhibition from the Court above, but repeal my own Decree, which will undoubtedly be illegal and absurd. As that Decree stands unreversed, I have no power over the parties in it. The Memorialists measures ought to be such as were founded on the Reversal of the sentence of the 31st of March 1757, without any Reference to the proceeding in the second cause, and as though no such Cause had ever been instituted, and whatever can legally be done to give him the effect of any determina-

tion in his favour in the Court in that Cause, I shall be very ready to direct and order.

(After this decision Y'Bannes caused Apostles to be prepared as is shown by drafts remaining on file, but there is no evidence that the appeal was perfected.¹)

THE KING AG^T THOMAS MILLER & SAMPSON
SIMPSON.

A libellant who does not apply for a hearing on libel and answer cannot urge that evidence tending to support the allegations of the answer is immaterial and incapable of affecting decision.

Though a capture be a good prize, a privateer's neglect, without cause shown, to bring into port the vessel seized and the prescribed witnesses from the crew is a breach of the conditions of her bond, and renders her sureties liable for the penal amount thereof.

(More than two years before the Lords Commissioners of Appeal signified their opinion that Haddon's sureties should be sued [*ante*, p. 119] the Governor and Council had ordered the Advocate-General so to do, and at about the same time directed that a proclamation issue for the apprehension of Haddon by any peace officer. Christopher Miller, the First Lieutenant of the *Peggy*, was simultaneously summoned before the Council to show cause why his commission as an officer should not be revoked. He personally appeared and was exonerated, but no record remains of the charge or its

¹ Before any appeal could have been heard, war broke out between Spain and Great Britain, and libellant became an alien enemy. These proceedings (with *The King vs Miller*, *post*) give a complete picture of privateering. The master of the "private vessel of war" was expected to take risks, and seize anything he could; his sureties and their counsel were expected to make recovery as difficult as possible.

It is obvious from Marsden, p. 85, that neither court nor counsel in England understood the New York practice. This independent libel is called a "claim," and was treated as filed in the original suit. In truth the Prize Commissioners paid little attention to procedural matters and treated the matters before them as principally political.

disproof. Miller apparently did not testify in any of the three causes arising from the seizure of *El Virgin del Rosario*, although he must have been regarded as competent, inasmuch as Y'Bannes himself was a witness for the King in this case.

On July 14, 1758, the Advocate-General filed the amended libel¹ herein, setting forth that Nathaniel Marston and Jasper Farmer had in 1756 applied to the Governor to permit their schooner *Peggy* to become a private vessel of war under command of Richard Haddon; that such application had been granted and the Judge of the Admiralty Court accordingly authorized to issue Letters of Marque on obtaining security in £1500 sterling that said Haddon and his Lieutenants would faithfully observe the rules and regulations then in force by Royal authority in respect of the conduct of privateers; that said Judge had issued Letters and taken the bond of Thomas Miller and Sampson Simpson in the amount required.

The libel then set forth the conduct of Haddon and his treatment of Y'Bannes in substantially the same language as in the claim and answer rejected in *Haddon vs 10 Doubloons*.

Breach of the conditions of the bond was assigned in that (1) Y'Bannes' schooner had not been brought into any British port for condemnation, and (2) Four of the principal men on board, two of them being the Captain and Pilot, had not been retained by Haddon as witnesses to the circumstances of capture; such omissions being in plain violation of specific rules contained in said regulations.

It was further alleged that the property taken exceeded that produced by Haddon and sold under order of the Court, in *Haddon vs 10 Doubloons* (ante) and that Y'Bannes and others had suffered damage and expense beyond the value of the property taken. The joint answer of respondents, set forth that *El Virgin* was not fit to come north in winter weather, but gave no excuse for not taking her to a British Island having a Vice Admiralty Court, and averred that it was im-

¹ The original libel was demurred to on July 1. The libellant amended (or "altered" as the minutes read) in consequence, but the reasons do not appear nor does the nature of the changes, the original libel having disappeared.

possible to discover who was captain, or who the principal men on board. As new matter it was alleged that there was good reason to suspect *El Virgin* of being French, and that if she were not she was armed, and had no documents showing her origin, ownership, destination or occupation and was therefore lawful prize.

After issue joined the respondents moved for a commission to Havana, in order to prove the circumstances of the voyage of *El Virgin* and her papers if any. Libellant opposed, alleging that no such evidence could affect the question whether Haddon had violated the regulations, upon which single point this case depended.

On this the Court filed the following)

Sept 2, 1758 This Court having considered the Arguments for & ag^t a Commission issuing to examine Witnesses at the Havanna the judge delivered his Opinion in the words following to wit: I think the def^{ts} in this Case ought to have the Commission prayed for. The Advocate General if he thought the answer of the defendants insufficient ought regularly to have come to a hearing upon the Libel and answer, then if any substantial part of the Libel appeared to be confessed & not well avoided Judgm^t must have passed for the Crown, but by his replication the matters pleaded in avoidance are admitted to be a good Bar & the def^{ts} are thereby put to the proof of them. It appears to me on the face of the proceedings in this Cause exceeding probable that Evidence relative to some of the points in issue may be obtained by examining witnesses at the Havannah; Therefore an Affidavit to ground the Motion for a Commission is in this Case unnecessary, If so I cannot refuse a Commission, and tho' it will create some Delay, yet being necessary to the defence the delay is unavoidable and cannot be unreasonable, neither can there be any objection to the persons named for Commissioners on the part of the defend^t.

Their eminent Stations, give me Hopes that the Trust will be fairly and honourably executed.

As the issue is taken the whole proof in this Cause does not lie upon the Crown, and if it did I do not see any force in the objection founded on that supposition. The defendants have a right to enquire into the Credit of the Witnesses produced by the Advocate General, & one of those already sworn before me in Court being a Negro from the Havannah, it seems the more reasonable to make the Enquiry, besides by an Examination at the Havannah the highest and most satisfactory proofs, relative to the Documents with which the vessel stopped by Haddon was furnished will probably be obtained.

(Thereupon commission issued, and was not executed until April 23, 1760; the date of its arrival in New York does not appear.

During this period of delay libellant moved repeatedly for publication and hearing; without success.

Upon return of commission however (July. 2, 1760) the respondents so moved, and without success (perhaps owing to the death of Mr. William Kempe, Advocate-General) until March 19, 1761, when argument had by

John Tabor Kempe, Advocate General and Mr. James Duane for the Crown;

Messrs. Richard Morris and William Smith, Junr for respondents.

The evidence of four witnesses for libellant fully upheld the allegations of the libel, except as to the port of departure; but two of these men could not write, yet deposed to long lists of names and the contents of paper writings, each using almost identical language. All these witnesses said they were on board the schooner when captured, and that she carried no cargo.

For respondents four of the *Peggy's* crew swore that no papers of any kind were found on *El Virgin*, that Haddon offered to take the prisoners to Havana, at which they asked

him to keep the property seized and let them go, that the vessel was armed yet no one seemed to be in command, and that the crew was a motley of nations and far more numerous than was proper for a mere trader.

The Havana commission showed Y'Bannes as a man of humble occupations, usually a "herdsman" and sometimes a privateer. That the charter party to David was no more than an engagement of passage by David for Abbott & Meyerhoffer, that Y'Bannes had spoken of going trading to Jamaica, that his schooner was not registered at Havana as having ever been in that port, and that Y'Bannes himself had been incarcerated at Havana for trading abroad, or seeking so to do without a license or permit, *semble* immediately on his appearing in Cuba after meeting Haddon. The whole testimony left the nature of Y'Bannes' voyage unexplained, but there was no evidence to prove him anything but a Spaniard, who when captured was probably evading the stringent navigation laws affecting Spanish Colonies.

The Court filed opinion, after the action of the Appellate Court on December 19, 1760, was known in New York, thus:)

June 27, 1761 This is a Suit against The Defendants as Bail for Richard Haddon, who is charged with the Breach of Those Instructions, which The Defendants Ingaged, under The Penalty of £1500 Sterling, he Should Strictly observe.

That Part of Haddons conduct, which gave Rise To this Prosecution is The Seizure of certain Effects, out of The Schooner La Virgin Del Rosario &c, in December 1756, which To The Value of about four and Twenty hundred pounds were Libelled in this court, and condemned in March 1757 as Prize; as his Behaviour in That Instance has been Represented as Piratical, and The honour of The crown, as well as The safety of The Subject appeared To be concerned, I was willing That this cause Should be carried on in Such a Manner, as Might give The Prosecutor, and The Defendants, full time, and The Best opportunity to

Produce Their Proofs, Expecting That from Them, the truth would appear Relative To a Matter, which has Attracted not only the Notice of The Publick but of The Government.

It was Therefore with Some Surprise, That I found The Evidence before Me, upon which alone I am To form My Judgment not only [not] Sufficient To Support The heavy charge of Piracy, but of Such a Nature That If I was To Determine upon The Single Question, whether the schooner and her Lading were Prize, or Not, I should not hesitate To give Sentence in The affirmative.

It is True Indeed, That The witnesses for The Advocate General Declare The property of both vessels, and cargo, to be Spanish, but it is To be observed, That The Surprising Similitude in The Tenor of Their Depositions, Renders it very Suspicious, That There was a concert amongst Them To Relate The Same Tale; That The Testimony of The Two unlettered witnesses, (who could not write Their Names,) To Sundry Matters, and Particularly to the Identity of written Papers, is almost Incredible, and above all, That They are Personally Interested in The Event of The cargo; add To This, That There Does not appear, Even by Their own Accounts, That There was any bill of sale on Board To Shew To whom The Schooner belonged, according To The Invariable custom of The Spaniards, and Many other Nations; Not a Single bill of Lading, or any other Documents Specifying who The Proprietors were, of any Part of The Lading, which is Repugnant To the usage of The Merchants of all countrys; who do not Leave the proof of Their Interest, To Depend upon The Knowledge of The Seamen, or Their own oaths.

I Should Therefore have Thought This an Ineffectual Defence if The Vessel and goods were now Libelled

by The captor, as Prize, and from its weakness have Presumed in favour of The Lybellant, and condemned both, as I have Done upon The Same Principles, in The course of this war, in Sundry cases where Dutch claims have been Interposed, and very Justly, as I am The More Inclined To think, Since Those Dutch cases have been confirmed by the Lords of appeal:

but The Reasons for Adjudging against The Schooner, and The Effects on board of her, would appear Much Stronger, if upon The Question of Prize, or no Prize, The Same Proof Should come out, which The Defendants have Exhibited in This case,

They have Examined four witnesses here, and some on a commission at The Havana, none of These Appear to be affected by The Loss or gain of the Defendants in This controversy, and if They are Therefore To be believed, Haddon had at least good cause to proceed against The Schooner and her Lading, as Prize. The circumstances were very Suspicious, No Documents appeared, It was Difficult To find who commanded, The vessel was armed, in Seas where a fair Spaniard had Nothing To fear; The Lading itself consisted of such articles, as seemed To Indicate its being collected by Rapine; unusual Terror on being captured, a Declaration That They came from The havana, and yet Terri-fied at The Thought of being carried There; Earnest Intreaties That They might be Dismissed, and a voluntary Surrender of The Effects, found in Their Possession; and what gives The greater force To the Language of all These Instances of The conduct of the Schooners crew, is This; That it Does not appear That any Illegal acts were used To Excite Them, None of Them were Tortured, or abused; Haddon counted Their Money and Effects, Publickly, and gave a certificate of The articles, and put it in Their Power to

follow him, and Reclaim Them, by Releasing The Vessel, and Discovering his Name and Destination:

I am The Less Inclined To Suspect That They were Influenced by any behaviour of The English captains appearing To be of a Piratical Nature, because The Dismissing a vessel of great Value, Just before, and his Immediate Return To New York, Excludes The Supposition That he had any Design To commit a Piracy; and The Terror which The witnesses Declare The Schooners crew To be Affected with on being Told They Should be carried back To The Havana, is well accounted for, if we suppose That Y Banes, was one of Those Spaniards engaged with some Jamaica Merchants, in a Trade of Bartering Provisions for cash, a Trade utterly Interdicted by The Spanish Laws, and for which Y Banes appears To have been actually committed at The havana, in August 1757, according To The Testimony of Don Antonio De Florenca; and That he was concerned in That clandestine commerce, is very Probable from Several Particulars in The Affidavits, Transmitted on The Return of The commission:

In This view of The Evidence I should have been of Opinion To Acquitt The Defendants, had The cause Turned barely upon The Part of The charge of Haddons breach of The Instructions, in The Seizure of The goods of the subjects of one of his Majestys Allies, but unfortunately for The Defendts, The Defeat of Their Defence Lays here,

first There appears To be no good Reason assigned, why The Schooner was not Brought into Port; The Danger of comeing upon This coast is Not Sufficient, Even if it had been shewn clearly, That The vessel was unfitt for Such a Voyage; for she Might have been carried To one of The west India Islands, Particularly as Jamaica, which was at no great Distance from The Place where She was.

Secondly The Neglect To bring in four of The Principall Persons of The Schooners Crew, is fatal.

I am not of The Oppinion Insisted upon, That The Testimony of The witness upon which I founded My Decree against The Schooners Effects in March 1757, was Insufficient; at That Day There was not The Least Rumour, or Suspicion, That The Seizure had been Irregularly Made, The Evidence amounted at Least to half Proof, and Yet I Thought it Prudent To Suspend The Effect of The Sentence till a year and a Day, which considering The Vicinity of all Ports of The west India Seas, and The favorable Season then Approaching for a voyage from Thence, gave a Reasonable time for a claim To come in; and it appears from the Proceedings in this court, in The Behalf of Y'Banes, That he actually arrived here before That time Expired, Tho he put in no claim. Besides if There was any Infraction of The Instructions by not Sending The witnesses Directed To be Examined in Preparatorio, There was a Method Prescribed for a Propper Punishment. The Present Suit is Brought For That Purpose, and The captains Neglect in This Instance also, Exposes his Sureties;

I am Therefore of Opinion That The Instructions have been Broken by capt^t Haddon, and I Do accordingly Adjudge and Decree The Penalty of the Bond given by The Defendants, To be forfeited, and The Sum of fifteen Hundred pounds Sterling To be by Them Paid To his Majesty his heirs or Successors.¹

(On July 7, 1761, this decree was appealed from by Simpson and Miller. There is no record evidence that the appeal was ever perfected; nor that the respondents paid.)

¹ This opinion is copied from the original in Judge Morris's handwriting, and exhibits his peculiarities of spelling and capitalization, as distinct from those of the clerks who from time to time wrote in the Minute Books.

CAPT JACOB ROOME ET AL AG^T SHIP S^T FERNANDO
& LADING.

The cargo of a Dutch ship, laden at a French port nominally for account of Dutchmen, held to be French property on the evidence of papers captured on another vessel, but the vessel acquitted on payment of costs, she having a Sea Brief and Turkish Pass for Dutch owners, and no trading license for French ports being proven.

No commission to examine witnesses can (under the statute) issue in a prize cause unless the Court is in doubt, and then only within the time limited.

(The Dutch ship above named and her cargo having been proceeded against as prize to the Privateer *Royal Esther*, the claimant moved for a commission)

July 7, 1758 The Court having considered the Motion for a Commission to Examine Witnesses in Holland is of Opinion that by the Act of Parliament, no commission can issue unless the Judge is in Doubt & then must be Applied for in Ten days.

(The cause having been subsequently argued on depositions and exhibits now lost, by

Mr. Richard Morris for libellant;

Mr. James Duane for claimant.)

Aug 25 The Judge Delivered his Opinion in the words following viz^t That the French carry on their Trade in Dutch Bottoms cannot be doubted from the many Discoveries that have been made in the Admiralty Courts both in Europe and America at the commencement of the present war. The enemy confideing in the Treaty between England and the States General thought their effects safe in Dutch ships, and were not very carefull to prevent the Discovery of their Titles; but since the Dutch Flag has been found to be an insufficient Protection alone, the French have had Recourse to all possible Arts for concealing the true Proprietors of the Cargoe; and of late the Covering is so well laid on, that a Detection of the enemys Prop-

erty can rarely be made by the severest searching into the Ships Documents, or the strictest Examination of the Crew. With Respect to the Documents of the ship in Question, they all conspire to show the Property of the Bottom & Cargoe to be Dutch; for the ship, there is a Sea Brief, and a Turkish Pass, both declaring that she is owned by Dutchmen, and all the Papers either supposed or at least contain nothing to the Contrary.

Besides those, there is a Pass to Curaçoa from the West India Company, a Number roll shewing that the seamen contracted for that or any other voyage at the pleasure of the captain; a Bill of Lading to Deliver the outward bound Cargoe at Coraçoa on account of Jouncealle & Parelle Merchants of Amsterdam, a Letter from them consigning the Cargoe to Messrs Speeht of that Island, another from Hop & Baker the Managers for the West India Company to Faesh the Director General at Coraçoa inclosing a Manifest of the Cargoe &c. There are also sundry Invoices and Bills of Lading of Adventures consigned by Dutch owners to the Claimant; and yet the true Voyage as appears by the Charter party made between the Captain and Jouncealle was from Amsterdam to Cape François and the Cargoe consigned to Auger & Comp^y of that port.

So that all the Papers showing her to be bound to Curaçoa, and the consigned Letters to Messrs. Speeht must have been contrived either to conceal her real Destination or to get an Admission at Curacoa in Case a Permission to trade at the Cape could not be obtained; for this ship does not appear to be furnished with a trading Lycence from the French King,—which have of late been frequently Granted.

The Cargoe now on Board and taken in at the Cape, and laden by Auger to whom the outward Cargoe was addressed by Jouncealle & Parelle. There is an acct^t of the Sales of the European Cargoe No L, an Invoice of

the Return Cargoe No M, with a Letter No O from Auger to the Freighters inclosing an account of the Charges; besides these there is a Bill of Lading for the Cargoe shipped by Auger to Joancealle & Parelle & sundry Accounts Current, and Memorandums relating to the Goods said to be shipt upon the Claimant's own account, and the Returns of the adventures with which he was charged at Amsterdam.

All those were papers found on Board at the Time of the Capture, and delivered into this Court with the Letters K 1, 2, 3 and 4, and some other upon oath; and they vary as to the ships original Destination and the adventures are not consistent with the Letters to Messrs. Speeht or the Charter Party; yet they afford but little Ground to suspect that enemies have any Concern in the vessel or Cargoe; and therefore I am not in the least surprized at Commodore Forrest's returning the ships papers S and P, especially since its probable that the Charter party was not shewn to him, for had that been the Case, the Claimant would not have declared himself bound to Curaçoa.

The witnesses in the Cause appear in general to know very Little concerning the true Voyage, and nothing very material relative to the Property on board; they however suggest several observations unfavorable to the Defence, but the intercepted Papers afford the Clearest conviction of French Property in the lading.

The Exhibitts B T and the Letter C F which was inclosed in it, were found in the two Vessels, lately brought into this Port by Solomon Davis and Condemned, and come to my Hands upon Oath; Among the Papers found in those Prizes, from the Letters which are evidently in the same Handwriting with the Exhibitts No L No M found in the ship in Question, it appears that there was a Correspondence between

Auger & Company of the Cape [François], Poyer & Company of Nantz and Jouncealle and Parelle of Amsterdam, that sundry effects were then shipping by Auger & Company for Europe on the account of sundry Frenchmen in the ship M, that all the insurance were to be made by J P who it seems were to have all the Proofs of the several Interests as F of the C (or freighters of the Cargo); the letter L.C.F. inclosed in that to Auger & Company being written to Jouncealle & Parelle, leaves me in no Doubt that they were the persons designed by the Capitals J P: the letter T L to [Poyer] closes with an Encouragement to continue the Trade upon the Prospect of obtaining Commissions with Ease, which by the way accounts for this ship's being without the King's Leave.

These letters with the presumptive Circumstances appearing in the Depositions raise a very Strong Suspicion, that a Cargo shipped in the Name of Jouncealle & Parelle under the same Marks, at the same Place, by the same Person, and within a year after must also have been in trust for Poyer & Company or some other French subjects. That such a conjecture would have been well founded, the papers furnished by Captain Seymour clearly evince, and that his Testimony is true there is not the least Reason to Doubt; his Character is unexceptional, the Fact he relates was known to a whole ships company. The Witness has no Intrest in this Controversy, the Papers found (comparing of them with the ships papers) appear by the strongest similitude to be all in Auger's Handwriting; except those marked (A B &C.) and their very Contents corresponding with the ships Papers give me the highest conviction that the same person must have been the writer of them all.

The Exhibitts from A Z to D Z inclusive show that Neutrals have been permitted to Trade at Hispaniola

during the present war, and that the ship which blew up in the engagement with Captain Seymour was bound to Nantz or some other port in Old France, which accounts for these papers being found in her bag, and they are of no other use in the cause now before me. But the remaining Letters and accounts render it very evident, that the Goods shipped under the Names of Jouncealle & Parelle belong to the Governor and Intendant of St Domingo, Auger, Poyer and other French subjects; and if any Part of the Cargo belonged to Jouncealle & Parelle I should incline to condemn it, not only on the account of the Colouring but because there is great Reason to believe themselves to be French subjects, from that circumstance of their holding an Estate in the French Islands mentioned in the letter marked G Z.

The Exhibitt H Z tho not directed at the Head of it to Poyer & Comp^y was certainly written to them, for as Auger had forgotten to enclose the acct^s of the sales of the St Fernandos Cargo mentioned in it with other accounts, we find it afterwards put under a separate cover; Auger acknowledging therein under his own Hand that he had before forgotten it, and this Cover is superscribed with a Direction to Poyer & Comp^y at Nantz.

The French Property being thus clearly made out, by these intercepted Papers, all the ships Documents declarative of the exclusive Title of Jouncealle & Parelle to the Cargoe, must be false and colourable; and every presumptive Circumstance appearing either in the ships Papers or the Depositions ought from this discovery to derive an additional Force.

As to the adventures claimed by the captain for himself and others, the proofs of their being Dutch Property depend on the Papers found on Board relating to them; and the claimant's own Oath; and if his Credit

was unexceptionally fair I should have inclined to acquit them, even though there are no Bills of Lading for them on this Voyage, which are customary Documents, and more necessary on several accounts, in case of accidents. But I am very far from entertaining a favourable opinion of his Integrity, for (1) it appears by the Charter Party and the Letters to Messrs Speeht that he was restrained from taking any other Goods on Board than those shipped by Jouncealle & Parelle except a small adventure for himself, mentioned in a manifest which I do not find under the Ship's Papers, and therefore either his Claim is not true, and himself perjured, or if true his Dishonesty unquestionable. (2) If he really believes as he has sworn, that no French subject was Interested in the Lading, I am at a Loss to account for his Care in providing a suitable Place for the Concealment of Papers, his starting the water Cask upon sight of the English Men of War near Monte Christi, his Declaration to Commodore Forrest that the ship fell to Leward by misreckoning, his putting the ship in a state of Defence immediately, his Leaving the Cape in a sea where a Dutch ship had no enemy to fear, and lastly his throwing Papers overboard, which if they contained no Evidence of a French Title could do no harm. (3) It is observable that Auger in his Letter to Poyer marked H Z informed them that Levy the Intendant's Agent was to transmitt them Auger's Receipt for the Intendant's sugars, by the St Fernando, and it is very probable that he did so. If the Claimant examined the Papers he threw overboard, which his own witnesses declare to have been the Case he must (from Levy's Letters) have been convinced that the Intendant at least was interested, and if so could not swear as he has done.

As to the ship St Fernando she is protected by her Sea Brief and Turkish Pass unopposed by any Evi-

dence to draw their Credit in Question: all the Papers admitting her to belong to Dutchmen, and therefore I acquit her with Boat Furniture and Appurtenances, and order them to be restored to the Claimant; upon his Payment of the legal Acquittal Fees; but the whole Lading I adjudge and condemn as lawfull Prize for the use of Captain Jacob Roome, and the Owners & Company of the Royal Esther; and I also Decree that the Claimant pay the Lybellant his full double Costs to be taxed.¹

CAPT FRANCIS KOFFLER ET AL AG^T SHIP VROUW
CLARA MAGDALENA & LADING.

Upon the condemnation as prize of a cargo, and acquittal of the carrying vessel, the claimants of the latter must pay costs of acquittal.

A cargo bought in a French Colony by Frenchmen with the proceeds of the inward cargo there sold, though falsely cleared for Curaçao, from Holland, held French and adjudged lawful prize.

(The Dutch ship above named, cleared from Bordeaux to Curaçao, intending by the proof to go to some French port. Her Curaçao clearance was destroyed at sea, and she reached Port au Prince in safety, where a license to trade was obtained, the cargo sold, and another obtained for Amsterdam, said to be the property of the Dutch ship owners. Having been seized as prize of the privateers *Defiance*, *DeLancey*, and *Duke of Marlborough* and proceeded against in this cause, it appeared by correspondence captured about the same time on the French vessel *St Leger*, that Texier & Bros. of Port au Prince had loaded the cargo, and at least guaranteed the Dutch owners of the *Vrouw Clara Magdalena* against loss by capture.

Mr. Richard Morris for libellant;

Mr. John Morin Scott for claimant.)

¹ This case was appealed and reversed as to costs only, July 14, 1760 (Marsden, p. 219). The ruling evidently relates to costs of acquittal, *vide Vrouw Clara Magdalena, post*.

July 26 1758 This case is I think extremely clear. The goods were shipped at Bordeaux, & Destined to St^t Domingo, another French Port in the West Indies, where they arrived & Discharged their Outward bound Cargo, and took in a loading of Sugar, Coffee & Cotton, The Depositions Declare that the Captain Informed them that the Ship was to Returne to Amsterdam, but that appears to me in the same light as their Destination to Curaçoa on their Outward bound Voyage. Texier & Bro^s Letter (who had the Cargo to Dispose off) to St^t Martin & Angeley the owners of the Ship, with other Circumstances, shew the Property to be French.

Upon the whole I am clearly of Opinion the Cargo is French, and as such I Condemn it as Lawfull Prize for the use of the Owners & Company of Capts Koffler, Skinner & Fenton according to the Prayer of the Lybell in such Proportions as shall be hereafter agreed upon. As for the Ship she appears to be Dutch Property, and as Such I Do Acquitt her upon the Reclaimants paying the Costs of Acquittal.¹

CAPT JACOB ROOME ET AL AG^T SHIP VRYHEYD
OR LA LIBERTÉ & LADING.

A vessel entitled to all the privileges of a French ship will be condemned as prize, as though she were French.

An instance of "colouring" in the papers of a Dutch ship, found to be carrying on French trade.

(The vessel above named is indifferently called by the Dutch and French name in the remaining papers. She was claimed as prize to the privateer *Royal Hester*.

Mr. Richard Morris for libellant;

Mr. John Morin Scott for claimant.)

¹ To this decree an appeal was taken, and on June 2, 1760, the case was reversed as to costs only (Marsden, p. 212). It seems that had an appeal been taken in *Skinner vs Elizabeth (post)*, a similar modification would have been made.

July 26, 1758 The judge Delivered his opinion in the words following viz^t There is the same Colouring in the Dutch Papers in this Case as there has appeared in most of the Dutch ships brought in here; The Charter Party says she was to go to St Eustatia or Coraço, and the marriners were shipped for those places. The Capt in his outward bound Voyage, in answer to the severall English Privateers that examined him near Monte Cristo, Declared he was bound to St Eustatia or Coraço; but by Misreckoning had missed those ports, —and in two days after goes into Cape François the true place of his Destination.

To carry on the Colouring the Captain and French supercargo afterwards write Letters to Rotterdam and date them at Coraço;—tho neither of them had been there during the Voyage.

The Supercargo Jacob Lemesle is a Frenchman Born, has a wife and Family at havre De grace, but was made a Dutchman for this voyage, by becoming a Burgher of Rotterdam about six weeks before he sailed from thence as supercargo. There are letters from LeMesle signed Vallemont, though it Clearly appears by the letter that they are the same person and concerned in the Cargo; but this is to Carry the Colouring through it. That the Certificate obtained at Rotterdam in which it is sworn no Forreigner is Concerned in the Ship & cargo Directly or Indirectly, is so high a Colouring as must Render the certificates obtained in Holland under such Circumstances of very little weight in Courts of Justice; when by Letters from the supercargo under a feigned Name, the French Property is fully proven.

By the Passport from the French King it appears That Security is given in Paris in fifteen thousand Livres for the payment of the usuall French Dutys and Customs, and the performance of all the Conditions

therein mentioned. And as she is by that Passport Intituled to all the priviledges of a French Bottom,—I shall consider her as such. And do therefore Adjudge and Condemn the ship *Vryheyd* with her Boat, Tackle Apparrell Furniture Appurtenances and Lading as good and Lawfull Prize according to the prayer of the *Lybell*.¹

CAPT JOHN LUSH ET AL AG^T SHIP DAGEROED
& LADING.

CAPT JOHN TURNER AG^T CAPT CHRISTOPHER
HOPKINS.

A Dutch ship, pretending to be bound from and to Dutch ports, but proved to be engaged in taking French goods owned by Frenchmen to a French port, is lawful prize, both as to hull and cargo. The “*Colouring*” is manifest.

Men belonging to another privateer, serving on a vessel taking prize while they are aboard, share in the prize money.

(The Dutch ship *Dageroed* having been captured and proceeded against as prize to the privateers enumerated in the opinion, the matter was argued by

Mr. John Burnet for libellants;

Mr. John Morin Scott for claimant.)

Aug 24 1758 The Judge Delivered his opinion in the words following viz^t In this Case of the ship *Dageroed* there is the same *Colouring* with Regard to her Destination, as hath appeared in all the Dutch ships that have been condemned here.

This ship was Laden at Dunkirk, a French Port; Part of her Cargo Purchased at Bordeaux, another French port, and furnished with the French Kings

¹ An appeal was taken in this case, and in Marsden, p. 212, it is noted that on June 12, 1760, the *Vryheidt* was reversed as to costs. Since both vessel and cargo were condemned, this result is not clear; while spelling is of no importance, *query* whether it is the same case; or correctly reported by Marsden.

Passport, obliging of them to export the Manufactures of France to the French Islands; and to bring back the Produce of their Islands to some port in France; so that all the papers they are Possessed off to prove she was Dutch Property & Destined to a Dutch Island is manifest Colouring. There is one particular circumstance attending this ship that Differs from all the rest that have been brought into this Court, and that is that all the marriners that belong to her (except the Captain) at the time of her Loading at Dunkirk, were Discharged at Helvoertsluys; and a new Ships Company put on Board, that must of Course be Ignorant of what was taken on Board at Dunkirk; for which piece of Conduct the Owners of the said ship had without doubt their particular Reasons. The Invoice of the private adventure said to belong to Mr. Stanfield is attended with a Barefaced piece of Fraud; for the Certificate is signed by Captain Peter Lagerboom at the Bottom of the said Invoice, and the Invoice is Dated at Rotterdam the 20th day of February 1758. Yet Mr. Stanfield in his Deposition upon the Delivery of the said Invoice to the Register swears, that both Certificate & Invoice were wrote & signed since his arrival in the Port of New York. Upon the whole it is very Clear to me that she is Lyable to confiscation; Therefore do Adjudge and Condemn as Lawfull Prize the ship Dageroed with her boat (&c.) for the use of Captain John Lush and the owners (etc.) of the ship Duke of Cumberland; of Captain James Potter and the owners (etc.) of the brigantine Prince Frederick and of Captain Christopher Hopkins and the owners (etc.) of the sloop Prince George;—in such proportions as shall be agreed upon among them.

(Upon the entry of this decree, John Turner, captain of the Privateer *Knowles* of Philadelphia, filed his libel against

Hopkins as Captain of the *Prince George*, alleging that there had been an agreement between the two vessels to cruise in company and share alike in all prizes, wherefore he prayed attachment of all moneys arising from the *Dageroed* in the hands of Richard Sharp and Barent Provoost, agents of the *Prince George*. Hopkins appeared and answered denying that any such agreement existed, but admitted that at the time of capture he had on board eleven of the Knowles' crew.

The matter was argued upon depositions which have been lost, by

Mr. Richard Morris for Turner and

Mr. William Livingston for Hopkins.)

Dec. 3, 1758 The Judge delivered his opinion in the words following to witt: it appears to me by the several depositions in this case that no agreement or concertship between Hopkins & Turner hath been proved;—therefore I order the Lybell to be dismissed, & decree the defendant his costs to be taxed,—tho I am of opinion that the men belonging to Turner on board of Hopkins are Intituled to a share.

CAPT STEPHEN SKINNER ET AL AGT SHIP ST
MARCUS AND LADING.

Where those charged with investing the proceeds of a cargo sold in a French Colony purchased goods ostensibly for Dutch account, and shipped a part thereof in a Dutch bottom, but reserved the rest for an armed French vessel, *held* that such evidence warranted condemnation of the part shipped in the Dutch bottom.

The vessel, however, released on payment of costs.

(The Dutch ship above named (and her cargo) having been proceeded against as prize to the privateer *De Lancey*, the cause was argued by

Mr. Richard Morris for libellant;

Mr. John Morin Scott for claimant.)

Aug 26 1758 The Judge delivered his opinion in the words following; the case of this ship is that she sailed

from [name blank in minutes] To Nantz, where she took in her Lading and a french supercargo, and then proceeded to Au Cayes a port upon the Island of Hispaniola, where she took in her cargo, part of which was sugars and coffee; but the remaining neat proceeds of her outward bound cargo was to be Laid out in Indigo and shipped by a man of war or some other armed Vessel to france. This is a plain Indication to whom the Cargo belonged. I do therefore condemn as Lawfull prize the Cargo of the ship St Marcus. The ship with her boat (&c.) I do acquit upon her paying the fees of acquittal.¹

STEPHEN SKINNER AG^T SLOOP ELIZABETH & LADING.

Where a vessel and cargo, after seizure as prize under circumstances of great suspicion, are acquitted, the claimants must pay costs of acquittal.

(The sloop above named was proceeded against as prize to the Privateers *De Lancey*, *Charming Sally*, *Duke of Marlborough*, and *Recovery*.

Mr. Whitehead Hicks for libellants;

Mr. Richard Morris for claimants.)

Aug. 30, 1758 The Judge delivered his opinion Sentence & Decree in the words following. The property of the Sloop Elizabeth & Lading appears to be Dutch property. I do therefore acquit them upon payment off the fees of acquittal, at the same time I am of opinion that the privateers were justifiable in bringing her into port, therefore ought not to pay any Damages she might have suffered upon that account.

(No appeal was taken from this decree. *Vide The Vrouw Clara Magdalena*, ante, and the *St Marcus*, ante)

¹ This case was reversed as to costs (Marsden, p. 219).

CAPT JAMES DEVEREAUX ET AL AG^T SHIP
ELIZABETH GALLY.

The fact that a Dutch ship had on a previous voyage cleared from Holland for Curaçao, but had gone into Cap François, sold her cargo, bought French goods with the proceeds and loaded the same for home, *held* persuasive that, when on another voyage she was found and seized near the Cape, she intended to do the same thing.

Allegations that such approach to the French coast was of necessity and in order to procure wood and water *held* unworthy of belief.

Such vessel and cargo *held* to be French or at least not proven Dutch (the burden being upon her) notwithstanding her Dutch papers.

(The Dutch Frigate Ship *Elizabeth Gally* was captured by libellants near Cap François in July, 1758, and taken to New York as prize, after searching her and getting a supply of wood and water at Monti Cristi. The latter port was then Spanish, the former French; and the distance between them very small.

The *Elizabeth* was laden with bricks, coal, wine, beer, boards, linen and some manufactured articles, such as clothing and hardware, valued at thirty three thousand guilders; was fully documented as of Dutch build and ownership, bound on a voyage from Rotterdam to Curaçao under charter to Dutchmen, and her cargo was said by the witnesses to be more suitable for Curaçao than for the French Islands.

All the lading (except a few private ventures) was consigned to the supercargo, Antony Spyns, a Frenchman, who but a year before had sworn allegiance to the States General.

The place of capture was off the course for Curaçao; the reason assigned for being there was that she was out of her reckoning, and when that fact was discovered, the captain had concluded to make Cap François for wood and water. No shortage of these articles was revealed by the evidence.

It was not proven that the *Elizabeth* had, or expected to get a French pass, or license to trade; and the only variance proven between the ship's condition and her papers, was that the master's private venture was by charter limited to five hundred guilders, whereas he had on board goods valued

at over three thousand guilders. The supercargo, however, claimed an interest in these goods; but how large that interest was did not appear.

It was proven that on her next previous voyage the ship had likewise cleared for Curaçao but gone into Cap François, there sold her cargo, invested the proceeds in French goods and taken them to Holland.

The record still on file appears complete, but contains no evidence relating to the master's possession of any letter of credit.

Cornelis Janse as master of the *Elizabeth* claimed ship and lading; he took no testimony and the case was submitted without argument on motion of Mr. William Smith, Jr. for libellant. Mr. Richard Morris appeared as proctor of record.)

Oct 6 1758 The Judge Delivered his opinion in the words following: By the ships papers it appears That the ship Elizabeth Gally was bound to Curaçoa or St Eustatia; The Cargo consigned, and the vessel recommended to merchants in Curaçoa: the mariners shipped for Curaçoa or St Eustatia.

By the preparatory Examination, it is evident that Antony Spyns the supercargo or clerk as he is called, was a native of Dunkirk and a french subject; That he became a Burger of Sigewaert in Holland in the month of June 1757; That he made a voyage in this very ship the last year from Rotterdam to Cap François; That he sold his Cargo there, and made returns in sugar and Indigo to rotterdam.

Whatever pretensions the capt may make, it seems clear to me he was bound to Hispaniola when the Last voyage was made; and that stale pretence of their missing the Island of Curaçoa by their bad reckoning, can have no weight with me because it is the general answer all the Captains give, when they are taken going into the french ports.

The capt is conscious to himself that the ship and

cargo is french property, & what Induces me to be of that opinion is his own conduct since he was brought into this court: he had a Letter of credit for one thousand pounds sterling upon a merchant in this city; which he would not make use of to Defend his ship & cargo; had the ship and cargo been bona fide Dutch property and destined to Curaçoa as he pretended, surely no man in his senses would have declined a Defence that could fully prove the property,—as he was furnished with sufficient means to prosecute his cause to effect.

Upon the whole I am clearly of opinion that the ship & cargo are french property, that she was bound to Cap Francois or some french port upon the Island of Hispaniola. As being french property I adjudge & condemn her & her lading as Lawfull prize, &c.

(After this decree Messrs. William Livingston and John Morin Scott appeared and took an appeal. The decision was reversed (Marsden, p. 214), the Commissioners apparently believing, and deeming it material that the Elizabeth was making for Cap François only for wood and water.)

CAPT ANTHONY RUTGERS ET AL VS SHIP GLOUJANDE STAR AND LADING.

The fact that a ship has false papers, goes to a French port when ostensibly destined for a Dutch Colony, and deals with an agent well known to be concerned in enemy trade, raises a presumption that she and her lading are French. Such vessel and cargo condemned.

(The ship above named was proceeded against as prize to the Privateer *Boscawen*.

Messrs. William Smith, Jr. and Richard Morris for libellant;

Mr. James Duane for claimant.)

Oct 12 1758 The Judge delivered his opinion in the words following viz^t this ship by some of her papers

appears to have been destined from amsterdam for Curaçoa, and yet by others tis evident that she sailed first to Bordeaux and thence to Portoprince in the french part of Hispaniola, where the present Lading was taken in. This circumstance of her not proceeding to the port for which she was cleared, but to a french port, together with the known practices of the Dutch during the present war, of Employing their ships in the service of the french, shews that her papers were Colourable; and that lays the foundation for presuming that the french are Interested in the voyage.

This presumption has the greater weight with me because;

1st The Invoice of the outward bound Cargo and the Instructions to the cap^t are supposed to be given by Peter Babut as an owner of both the ship and Lading: now one at Least of these is fraudulent, for the signings of Peter Babuts name are very Different; one or other of them is evidently gross counterfeit.

2d The signing of the Invoice of the outward bound Cargo is written by the same hand with the unsigned Invoice of the return Cargo now on board, and with the same ink, and as the Latter must have been made at porto prince, the former of consequence must be a Counterfeit.

3d The handwriting of the Exhibit 1st No. W signed Texier & Frere being compared with the signing of the outward bound Invoice & the whole Invoice of the return Lading,—I have not the Least doubt that they were all written by the same hand; and the Texiers of porto Prince have appeared to me concerned in the protection of a french Interest in several causes that have passed under my cognizance during this war. These french merchants have had a Considerable agency in the affairs of the voyage while the ship was at porto prince, and as their brother of Amsterdam is

Declared to be Interested in the bottom, tis very probable the lading was consigned to them, & hence those papers showing the consignation to be to the capt^t are strongly to be suspected as colourable; and it may not be Impertinent to observe here, that even M. Texier of Amsterdam appeared in a late case before me to have Lent his name for concealing the property of the Marquis De Conflans.

4th Upon comparing the Capt^a' handwriting in the signing of his Examination,—which is easy and fair, [with that] at the foot of the bill of Lading for the return Cargo, It appears that they neither agree in similitude nor in the spelling of the Christian name; and I am the more Induced to think the Latter is not his writing, because his other subscriptions are always alike.

From these remarks & severall others unnecessary to mention, & which naturally offers themselves upon perusal of the papers [and] examination in preparatorio, I do condemn this ship and her cargo as Lawfull prize &c.

FRANCIS KOFFLER ET AL VS SHIP CONCEPTION
DE ST IGNATIO DE LOYOLA.

LORENZO GHIGLIANO VS JAMES DEPEYSTER ET AL.

A final decree against captors in prize given (*semble*) because their conduct showed a conspiracy to retain the proceeds of a capture to the oppression of claimants, rather than a sincere wish to assist the Court in a just and lawful disposition of the cause.

The release on *habeas corpus* of stipulators in Admiralty, arrested under process of this Court, is a violation by the Judges of the Common Law Courts of the royal instructions contained in the Commission of the Admiralty Judge.

(The Roman ship above named, under command of Captain Ghigliano, was captured off Monte Cristi by the Privateers *Revenge* and *Hornet* and sent to New York as prize.

Upon the hearing, the Court held that Captain Ghigliano was entitled to his own venture, and his freight upon the whole cargo and gave decree accordingly. Action as to the rest of the seizure was withheld, further than to order it sold as perishable by James Depeyster and Joseph Forman as agents;—for whom Napthali Hart Meyers and Matthew Clarkson became sureties.

Decree as above having been entered September 4, 1757, Koffler *et al* appealed from the judgment in favor of Ghigliano. The usual stay of eight months was obtained by appellants, who, however, took no steps to prepare apostles. Thereupon Ghigliano sent his brother to England, and procured certificates from the Appellate Court that no apostles had been actually lodged. Ghigliano then applied for execution against Depeyster *et al*, while Koffler *et al* moved for final sentence and decree on the whole case.

Messrs. Benjamin Nicoll and William Smith, Jr., for Ghigliano;

Mr. William Livingston for Koffler *et al*.)

Oct 12 1758 The Judge having further considered the several matters of this cause delivered his opinion in the words following to witt: This ship, an adventure and one fifth part of the Cargoe, I formerly acquitted on the claim of Lorenzo Ghigliano. As the Lading was perishable and the Claimants fifth part could not be Liquidated without a Sale, I made an Interlocutory Decree for that purpose, and did not Condemn the Residue of the Lading; because I thought the proofs on the part of the Libellant insufficient, but suspended the Sentence; it being possible that on further Consideration some new Light might be cast on the General Controversy. The Libellants indeed did enter an appeal, but took not one step towards the Prosecution of it; and suffered the Term assigned for their producing the usual Certificate of the Lodging of their Appeal in England to elapse.

The Reason of this Conduct of the Appellants now

plainly appears, for I find that Mr. De Peyster and Mr. Foreman who were intrusted with the sales of the Cargo, upon their Stipulation with Securities to bring it in to be subject to the further order and Direction of the Court, instead of faithfully performing their Trust, have, as Foreman himself informed me, distributed the money arising from the Sales, or a part of it, among the owners or Parties interested in the Privateer concerned in the Capture. Being thus possessed of all the Proceeds of the Cargo (except the Part acquitted to Captain Ghigliano, consisting of four fifths of the General Lading, and many other Goods, Shipped on adventure by Don Los Rios) no Wonder the Libellants were contented to drop the Prosecution of their Appeal; and that they afterwards opposed the Genoese captain's acquiring his freight and Gratification Money, amounting (according to his Charter party) to the sum of six thousand nine hundred and thirty Pounds Lawful Money of New York;—for which as the ship appeared to me neutral Property, I long since gave him a Decree.

This unwarrantable Distribution of the money arising from the Goods among the owners of the Privateer, accounts for the Difficulty, I have had to get the Agents and their Securities Naphtaly Hart Myers and Matthew Clarkson to bring it into Court.

I made an order or Decree for that Purpose on the twenty-seventh of January last, and had a Copy of it served upon them or one of them, and gave the other Notice by Letter directed to them & their Securities of my Desire that they would comply with that order or Decree. But they have neither brought in the money, nor even rendered to me so much as an Account of the whole sale, or what money they have in their Hands. I threatned them with an attachment quousque, but that also was Unnoticed; a Project being formed (as

the Event has shewn) of getting release from their Confinement by the Writ of Habeas Corpus, and thus eluding the regular Process of this Court.

Accordingly, as soon as they were taken into Custody by the Marshall and actually imprisoned on the sixth Instant, an Habeas Corpus for each of them was a few Hours after, delivered to the Marshall of the Vice Admiralty, and he brought them the Evening of the same Day before Messrs. Chambers and Horsmanden, two Justices of the Supreme Court who immediately Discharged them, and refused to give Time to Council to speak in support of the Admiralty Process, tho they only asked till the next Day.

What motives induced these Discharges, by which I am prevented from doing Justice to the Suitors concerned in the Admiralty, I am at a Loss to Conceive; and I shall leave the Judges to answer for their Conduct to his Majesty, by whom they are Commanded and Strictly Charged in my Commission of record in the Secretary's office of this Province, to aid and assist this Court under Pain of the Law, and the Peril that will fall thereon.

But that the main Drift of the Agents for the Sale, in Confederacy with the Libellant, is to Detain the Produce of the sales of the Lading in Question in their Hands as long as they can, is very manifest; and therefore I have thought proper to pronounce a final Decree in this Cause, and having before adjudged the Ship and one fifth Part of the Cargoe and the Freight and Gratification Money above mentioned to Lorenzo Ghigliano the Genoese Claimant, I do now acquit the Residue of the whole Lading, together with the Gold money found on Board at the Time of the Capture, and decree the same or the Moneys arisen from the Sale thereof, together with the said Gold money (in whose Hands soever the same are or may be) to be paid to

Don Francisco Xavier de Los Rios a Spanish merchant of Cadiz, to whom I adjudge the same of right to belong.

(Koffler *et al* immediately noticed an appeal from this final decree; but Ghigliano having begun an independent action against De Peyster, Forman, Meyers and Clarkson for the amounts withheld from him; the agents and their sureties concluded to pay Ghigliano. They visited Judge Morris at Morrisania and having there obtained his written permission to settle, the following minute was entered of record in the action against them:)

Nov 2 1758 (After reciting the appearance of Ghigliano and his acknowledgment of the receipt of £6930) "This Court doth thereupon order that the said James De Peyster, Joseph Forman, Napthaly Hart Meyers and Matthew Clarkson be discharged from their stipulation made to the Register of this Court" (so far as the amount paid Ghigliano is concerned)

(Subsequently Rios (the owner of so much of the seizure as was not awarded to Ghigliano) having appointed Jacob Franks of New York his attorney in fact, De Peyster, Koffler *et al* settled with him, and the last appeal was formally withdrawn on January 11, 1759.¹)

¹ The Judges who released the stipulators were not unacquainted with the Admiralty; Chambers had long practiced in the Court and Horsmanden had acted as Admiralty Judge, 1736-1738.

DePeyster and Forman were released from an arrest based on a summary order against them as stipulators or agents; but when Ghigliano filed an independent libel against agents and their sureties, they either had to go to jail or give bail to the action. They were then at the end of their tether, and travelled to Morrisania to make their peace with an obviously angry court.

But even with the Judge personally inflamed against captors, this cause furnishes a quite complete illustration of what an unwarranted capture meant. The privateers never attempted to better the case shown by the depositions *in preparatorio* and evidently never expected to win against any defence; but they used the proceeds of

THE KING VS WILLIAM RICHARDSON.

Even the Sovereign, when suing wholly to enforce the right of a subject, may be required to give security for costs.

(Respondent was master of the privateer *Duke of Marlborough*. Edmond Andrews shipped thereon as surgeon's mate. The Advocate-General in his libel herein, alleged a long course of inhumane and cruel conduct by Richardson toward Andrews; consisting in beating him when sick, ordering the surgeon not to attend him, putting him at the pumps for twelve hours at a stretch at a time when Andrews was weakened by a "bloody flux," and finally making him ride the bowsprit end for an hour, stripped to his shirt.

The libel prayed the "sentence and decree of the Court against Richardson for his unjust, barbarous and cruel treatment," without specifying or referring to pecuniary damage; nor was the action said to rest upon any statute.

Process having issued on motion of William Kempe, Advocate-General;)

Nov 1 1758 On motion of Mr. Nicoll ordered that security be given on the part of the Crown, and that all proceedings stay in the meantime.

(There is no record that the cause ever proceeded further.)

JAMES DEVEREUX ET AL VS SHIP LE SOLEIL.

JOHN NICOLL ET AL VS SHIP LE JAZON.

Privateers capturing, with and on enemy vessels, hostages taken to secure the payment of ransom from British ship owners whose vessels had been taken by said enemy, *held* entitled to recover from such ship owners, as salvage, one half of the agreed ransom.

(The Privateer *St. George* (Captain Devereux) captured off the coast of Hispaniola the French Letter of Marque *Le Soleil*. The French crew fled to the shore, leaving on board

sale for over a year and a half with the connivance of two of the best known citizens of the city and finally settled without interest.

No instance is found of interest paid upon an accounting by agents for sale and custody of proceeds.

one Englishman who had been held as hostage for the payment of a Ransom Bill for £100 Sterling drawn by the master of the British Sloop *Content* on one Main of Waterford, Ireland; said sloop having been captured by *Le Soleil* and freed on delivery of the hostage and of said bill of exchange.

No defence was interposed.

Mr. Benjamin Nicoll for libellants;)

Nov 2 1758 The Court does adjudge sentence & decree the said ship *Le Soleil* with her boat (&c.) as Lawfull prize Together with one full moiety of the said Ransom bill for salvage for the use of the Captors pursuant to the statute in that case made, &c.

(The case of *Le Jazon* presented similar facts; one Hopkins having been recaptured with *Le Jazon*, whereon he had been hostage for the payment of ransom for the sloop *Molly*.

The case of Captain Nicoll of the privateer *Oliver Cromwell* against *Le Jazon* was presented by Mr. William Livingston, and the Court entered a decree similar to that in *Le Soleil*.

No remaining record indicates that any method was suggested, of the Court's enforcing these decrees against owners or parties to the bill not within the jurisdiction.)

THE KING VS RICHARD SHARPE AND MATTHEW CLARKSON.

Where a privateer seized a vessel which showed papers conclusively proving Spanish ownership of both hull and cargo, and lost her by peril of the sea, *held* that the sureties on the privateer's bond were liable for breach of royal instructions.

No costs can be granted to a successful appellee, unless the higher court specifically awards costs.

A decree in favor of the Crown cannot be satisfied by a settlement with the subject for whose benefit the action was brought and decree obtained.

Payment of taxed costs may be enforced by attachment, even as between the proctor for the Crown, and the subject for whose benefit the Crown brought suit.

(The sloop *San Joseph* was seized as prize by Captain Ebenezer Tyler of the privateer *Black Snake*, and sent to Rhode Island for condemnation. She was there acquitted, as Spanish in respect of both hull and cargo. She sailed from Providence to French Hispaniola and there purchased a cargo of French goods; so laden she sailed for Campeche intending to touch at Curaçao.

Her master was Antonio de la Rosa, a Spaniard, who also owned half her cargo. Her documents (except those relating to cargo bought in Hispaniola) had all been judicially examined in the Vice Admiralty of Rhode Island and returned to Rosa.

On his voyage to Campeche Rosa was first stopped and searched by Captain John Nicoll of the New York privateer *Oliver Cromwell*, who let the sloop pass. Later and on November 29, 1757, Captain James Griffith of the privateer *Revenge* seized the *San Joseph*, after reading the same papers that had satisfied the Rhode Island Court and Captain Nicoll; and despatched the sloop with a prize crew to New York. On the voyage thither she was cast away on Martha's Vineyard and became a total loss, except as to about £600 value of cargo, which was taken either by the islanders or the privateers,—as it was never accounted for in this proceeding.

Rosa complained to the Governor and Council of New York, who being of opinion that the *San Joseph* and her cargo were entirely Spanish, directed the Advocate-General to sue Griffith's sureties for the penalty of the bond securing his obedience to Royal Instructions to Privateers, viz £1500 Sterling. Respondents herein were such sureties.

A libel was filed March 10, 1758 in the name of William Kempe, Advocate-General, but the proceeding was conducted by Mr. William Smith as Advocate; this eminent lawyer was also a member of the Council.

The libel set forth the facts foregoing, alleged that the value of the *San Joseph* and her lading was £3700 (current money), and that among the instructions in question was a special one strictly enjoining privateers not to take or molest Spanish vessels for any cause other than contraband goods. The only breach of condition alleged was that Griffith had taken the

San Joseph,—she and her cargo being Spanish. Decree was asked for the amount of the bond, for the use of the injured Spaniards.

The answer denied that the loss amounted to as much as £1500 Sterling or that the sloop or cargo or either was Spanish.

The libel did not allege as a breach of regulations that Griffith had freed the *San Joseph's* crew and neglected to bring them in as witnesses; nor did the answer assert that the loss of vessel and cargo was due to severity of weather.

Libellant's evidence supported the libel and was given by Rosa and other men from the *San Joseph*. The documents fully showed Spanish ownership and embraced a Spanish license for the voyage interrupted by Captain Tyler's seizure. Respondents took no evidence except as to the value in New York of sugar and coffee;—of which articles the lost cargo of the sloop had principally consisted.

Messrs. William Livingston and John Morin Scott for respondents argued, in their brief still on file,

1 All letters and papers of a date subsequent to the claim filed in the Rhode Island action, are presumed to be in support of that claim, and of no more worth than would be a claim standing by itself. Therefore the cargo actually on board was in point of law undocumented.

2 The documents are not sufficient to prove Spanish property: the most that can be allowed them is that they do not show French property. There is no sea-brief produced, which is the usual if not indispensable document, and the license is for a voyage other than the one on which Griffith captured her.

3 There was on board cargo obtained in a French port, and this of itself raised a presumption which justified Captain Griffith in sending in the vessel for judicial action.

4 The sloop was lost by the act of God while going to New York for the above lawful purpose.

5 Libellants' witnesses are interested, and therefore incompetent.

Mr. William Smith for libellant argued, in his brief still on file,

1. Griffith had "no authority whatsoever to disturb the navigation, obstruct the commerce, or seize the property of any other nation under Heaven, than that of France."

2. Therefore the question is solely of ownership; and as to that the proof is overwhelming; "not one witness has been produced to prove any of the facts alleged" by the respondent.

3. As for the interest of witnesses "we do not remember that the interest of a witness ever was deemed an objection in the King's Suit. The common law in similar cases, knows no such objection. The party robbed may ever be admitted as a witness for the King, when he sues for the penalty."

4. Since the Spanish have now as much right to trade with the French as they had before the war, the question whether the seizure was justifiable, depends on what proof was shown at the time of seizure. This embraces the documents (i.e. all the exhibits) brought in on oath by the captors, and by them "full conviction of Spanish property must appear to every unprejudiced mind from the bare reading of them."

In oral argument Mr. Smith enlarged upon the proof as showing loss greatly in excess of the face of the bond. He was stopped by the Court's observation, that no more could be recovered than the penalty of the bond.

The Court filed opinion and decree;)

Nov 25 1758 The sole Question before me in This Case is, whether Capt James Griffiths has broke his Instructions in Taking the Sloop St Joseph and sending her to the port of New York as Prize; by the several Depositions she appears to me to be a Spanish sloop, and that her Lading was Purchased by Don Antonio De La Rosa a Spaniard. I am of Opinion he Broke his Instructions, & therefore The Bond is Forfeited.

(Respondents appealed, and this decree was affirmed, Marsden, p. 186).

Thereafter and on July 4, 1761, the Advocate-General Mr. John Tabor Kempe (Mr. William Kempe having died pending appeal) filed his protest against delaying execution; alleging

that Mr. William Smith had kept the conduct of the case secret from him, that the affirmance and consequent undoubted liability of the respondents had but recently become known to him; that no one but the King could collect the amount due, and that De La Rosa or other claimant was entitled to nothing except by grant under the Privy Seal.

On July 11, 1761 Mr. William Livingston showed cause against issuing execution by filing a memorial¹ from Rosa setting forth that he had received from one Walton for account of respondents the full amount of £1500 Sterling. The Court held the debt still due to the Crown and permitted execution to issue. Such execution was returned "Nulla bona." No evidence remains that anything was ever collected from respondents by process. As Clarkson was reputedly one of the most prosperous men in the city, Mr. Kempe's action was probably no more than a method of keeping his own record clear.

Rosa then filed a petition setting forth that he had incurred heavy costs on the appeal and prayed execution therefor.

Aug 6 1761 I formerly decreed the Stipulation of the said Richard Sharpe and Matthew Clarkson for £1500 Sterling to be forfeited: and as the Lords of Appeal have on the 19th of December 1760 confirmed that Decree and given no Costs therewith; I am of Opinion I can add nothing to my former Decree.

(Mr. J. T. Kempe (who had taken no part in the cause personally) then taxed his costs, amounting to about £90, but whether this sum included the costs of his father and predecessor does not appear. Rosa was served with a copy of the bill. Thereafter the Register's fees also remaining unpaid, Morris, J. filed on or about October 15, 1761, the following:)

Let an Attachment Issue against Antonio De La Rosa for the Advocate General's fees & your own, as per the two bills certified,—and this shall be your suffi-

¹ See this memorial in Appendix, as showing form of mandate or judgment of Appellate Court.

cient Warrant. Lewis Morris. To John McKesson, Deputy Register of the Court of Admiralty.¹

ANTHONY RUTGERS ET AL VS SHIP ISAAC GALLY.

The presumptions enumerated and considered, which arise against a ship, ostensibly neutral, but found with papers showing divers destinations and carrying cargo procured in a French Colony and to be paid for in France.

Such vessel and lading *held* lawful prize.

(The ship above named having been proceeded against as prize to the privateer Boscawen;

Messrs. William Smith, Jr. and Richard Morris for libellant;

Mr. James Duane for claimant.)

Dec 13 1758 The Judge delivered his opinion in the words following viz: I have considered the evidence in this cause and think that a sentence ought to be given for the Lybellant.

The main presumptions against this vessel and her cargo are these:

(first) She sailed from amsterdam to a french port, traded there with the enemy, and came last from the Dominions of the french King; & since by the french Laws of Trade no foreigner can maintain a Traffic with their colonies, it must be supposed that the true

¹ This case is a striking instance of the laxity and uncertainty of appellate practice. The stated ground of affirmance herein was Griffith's failure to keep the crew as witnesses, a point not pleaded, nor mentioned in the remaining and very elaborate briefs. As a matter of fact Rosa almost certainly came north with his ship, for he began to lay his grievance before the Governor and Council so soon after the capture of his sloop that he could not have gotten to New York otherwise than as one of the men on board his own vessel. The only justification in the record for the Appellate Court's finding is the volunteered statement of one seaman, who said "the crew" was landed at Monte Cristi. This phrase never did (in seamen's language) comprehend the master.

proprietors of the ship & lading in Question are frenchmen.

(2d) The Lading being of the produce & manufacture of the dominions of France it follows, that it once was french property and the claimant is therefore driven to take off the presumption that it is so still, by full and concluding proof of a Transfer to neutrals.

(3dly) The consignment of the outward bound cargo to She & Cherridon, two frenchmen, who tis said purchased this Lading with the produce of the other, is another very suspicious circumstance.

(4thly) There is proof that the proprietors of part of the Lading are concealed; I mean that said to be shipped by Newhoff for unnamed persons declared to be portugese.

(5thly) The concealment of papers at sea upon sight of our men of war and privateers, affords a strong presumption of the enemy's Interest; since no reason can be assigned for a neutral subject concealing papers not Evincive of french property, and

(6th) It appears from the Letter of the 29th Novr 1757 signed by Ximenes, a Jew of amsterdam, who is pretended to be the owner, that Goods were to be put on board at St Domingo, for the payment of which bills of exchange were to be drawn upon him payable in france; & as this appears to have been the case in sundry late causes before me, where the Interest was in frenchmen, and the business of the voyage Transacted in the name of a Dutchman,—I make no doubt but that Ximenes has lent his name to a french merchant, as Texier, Testas and the Hopes of Amsterdam appear to have done in other Instances. If the goods were purchased for Ximenes himself, I cannot account for his payment of the bills in france; which must have exposed him to the charge of a considerable commission: but on the supposition that the true owners are

frenchmen This difficulty admits of an easy solution: and it is observable that Ximenes himself thought that this circumstance of the payment of the bills of Exchange in france was Improper to be divulged, & therefore tho he trusted the secret to the capt^t, yet says he; I have not wrote this to my correspondents (who were She & Cherridon) Lest my Letter should fall in other hands.

As to the ship's Documents they are so far from amounting to concluding proof to take off these presumptions, that they rather furnish new grounds for suspicion; for they are both foul & contradictory. (1) Contradictory; some alledging the destination on the outward bound voyage to be for St Eustatia, others for Curaçoa, and some again for port au prince, St Louis & Leogane. (2^d) they are Impeached in their credit by flagrant counterfeits; upon comparing the Exhibits G & I with the Genuine subscription to the Exhibits Y & X, it is manifest that great pains has been taken to counterfeit the handwriting of Ximenes in the subscription of his name to G & I, and this attempt Induces a strong suspicion of fraud; which the claimants confession that they are only copies does not remove: besides one of the witnesses declares that the exhibit I is not a True copy of its pretended original: and the claimants Intimation that the original is worn out is very Improbable. His Instructions was a paper of too much consequence to be neglected, & surely when the copy was made it might thenceforth have been preserved and submitted to the Inspection of this court, so that the concealment of it at once confirms the Testimony of the writings, strengthens the presumption in favour of the Lybell, & weakens the credibility of the claim. As to the two witnesses produced for the claimant, they declare nothing concerning the property but what they had in a way of Discourse from Ximenes,

and the claimant. Nor since they are Interested, do I conceive them to be Legall witnesses: again every ship ought to be furnished with fair, uncontradictory documents; this is absolutely necessary, and as these Documents are subject to the objections above mentioned, the Testimony of the witnesses, if full and unexceptionable, could not in my opinion supply the defect of fair uncontradictory papers: and therefore I condemn the Isaac Gally her boat (&c.) with her Lading as good & Lawfull prize (&c.) and do also adjudge & decree that the claimant pay to the Libellant double costs to be Taxed.

THE ST JACQUES

By consent of counsel witnesses may be examined orally and openly before the Court.

The proportions in which captors shall share a prize *held* to depend upon the tonnage and crew of the vessels concerned.

(This French vessel surrendered to the privateer *Oliver Cromwell* (Captain Nicoll), and was without doubt lawful prize. The *Polly* (Captain Bears) demanded a share and therefore filed a claim against Captain Nicoll's libel.

The cause was tried (as between the privateers) under the following stipulation as to practice:)

Dec 14 1758 This cause upon the claim of the privateer *Polly* to a share of the ship *St Jacques* & Lading being at issue, it is ordered, on motion of Mr. Livingston & by consent of parties signified by their proctors, that the Libellant proceed against the ship *St Jacques* & her Lading to a decree of condemnation; subject to the award or sentence hereinafter mentioned and also (as well to save expense as to give despatch) that all further evidence & proof relating to the matters in controversy, between the claimant & the Libellant, be summarily inquired into, heard & determined by the commissary and judge of this court with all convenient

speed, whose award shall be entered upon the minutes of this court, and have also the effect & force of a Definitive sentence; but the proctors on both sides shall nevertheless give notice in writing to the adverse party of all such witnesses as he Intends to produce before the Judge for his summary examination,—except those already examined *in preparatorio*.

(The matter having been argued by
Mr. William Smith, Jr. for the *Polly*;
Mr. William Livingston for the *Oliver Cromwell*.)

March 27 1759 The Judge delivered his opinion in the words following viz: Pursuant to the rule in this cause I have heard the evidence & proofs of both partys, on the claim of the privateer polly to a share of the prize ship St Jacques and lading, sumarily produced in the presence of the proctors on both sides. In this cause two points are to be considered; first, whether the cap^t owners & company of the sloop polly are Intituled to any part of St Jacques & lading or not, and 2^{dly} If they are intituled, what part or share are they Intituled unto.

As to the first point, it seems clear by the evidence that the sloop polly was not only in sight at the time of the caption of the said ship, but that the com^y of her used their endeavours both by sailes & oars to get up with her before she struck, and therefore I am of opinion they are Intituled to a share.

As to the second point, I think the most just way is to consider the Tunage & number of men on board each vessel: and it appearing to me the ship Oliver Cromwell is of the Burthen of 130 Tons and had sixty men on board at the time of taking the ship St Jacques and lading; and that the sloop polly is of the Burthen of Forty Tons & had thirty men on board I do therefore

award & decree 240 parts of 310 parts to the . . . ship Oliver Cromwell and the remaining 70 parts of the 310 parts of the said ship St Jacques and lading to the . . . sloop polly; but that the Lybellant pay the Claimant his costs to be taxed.¹

SHEFFIELD HOWARD VS THE MOIETY OR HALF PART
OF THE CHARMING SALLY WITH
HER TACKEL &C.

A bottomry bond secured upon the moiety of a vessel, enforced by sale thereof; but (*semble*) the whole vessel held by process.

Dec. 14 1758 On motion of Mr. William Smith Jun^r the Lybell was read & fyled, and the marshall returned the precept & certifiyd that he arrested the moiety or half part of the sloop (&c.) Lying at Montgomerie ward at the City of New York . . ., & that he did then & there cite the within named W^m Hanley Jun^r & others according to the Tenor of the warrant to him Directed.

Jan 11 1759 The Judge Delivered his opinion in the words following viz^t It appearing by the Bottomree bill on the sloop in question that the half part thereof is justly chargeable to the Libellant for the debt therein mentioned, I order the same moiety to be sold by the marshall of this court with all convenient speed, and that out of the produce of the sale he pay to the Libellant his debt of two hundred and thirty pounds,

¹ A similar distribution of prize money was made March 28, 1759, in respect of the French ship *Junon*. This decision is intelligible only by supposing that the copying clerk incorrectly wrote 130 as the tonnage of the *Cromwell*, instead of 180. The method of apportionment favored by Morris, J. was not universally accepted; see opinion of George Lee, Esqr. (Marsden, p. 359.)

together with his costs to be taxed & the overplus, of any there may be, being the property of W^m Hanley Jun^r, I order to be delivered to the Register for the use of the said W^m Hanley Jun^r &c.

JAMES DEVEREUX ET AL VS POLACCA ST JOSEPH
AND LADING

That the cargo of a Genoese ship was procured at Marseilles and in part furnished by French merchants, who, in the case of another vessel (condemned in this Court), had been held to be the concealed owners thereof, is not enough to justify condemnation.

(At about the same time, and near the Windward Passage, the *Royal Esther* captured the *Settee Conception*, and the *St. George* (Captain Devereux) with other privateers seized the above named Polacca.

Both prizes asserted Genoese ownership, both were brought to New York and libelled. On November 18, 1758 the *Conception* was condemned without opinion.

The *St. Joseph* was claimed by her master, and her cargo by the supercargo, one Mihel Angelus Michele, who had purchased the same (except some small private ventures) at Marseilles, where the vessel cleared for St Eustatia, and a bill of lading for all the cargo but private ventures, had been issued to Michele.

The officers, supercargo and crew were Genoese,—except two Spaniards; the vessel had been built at Genoa and was certified Genoese by the Consul of that Republic at Marseilles immediately before her departure on the voyage which ended in capture.

Libellants largely relied on the fact that at least some private ventures (e.g. the six barrels of flour mentioned in opinion) had been put on board by Duclos and Billancq, the same merchants of Marseilles who had been found to be the real owners of the *Conception* and her cargo. The place where both *Conception* and *St. Joseph* were captured, was not on a direct course for St Eustatia, and laid the vessels open to suspicion of intending to enter either Cap François or the

Spanish port of Monte Cristi; from whence land transport was frequently obtained to nearby French territory.

Mr. Richard Morris for libellant;

Mr. Benjamin Nicoll for claimant.)

Jan 11 1759 The Judge Delivered his opinion in the words following viz The Pallacca St Joseph (capt Joseph Aliberto) appears to be Genoese property, as there is not anything among the papers that shews the property is altered. I do therefore acquit the vessel as genoese property.

The next thing is whether the Lading be the property of the Genoese or the french; she having loaded at a french port, & was taken going into one. The Lybellant in support of the Lybell says that the settee La Conception lately condemned in this Court as Lawfull prize, took in her Loading at Marseilles, was commanded by one John Baptista Caybiso a Genoese, who was appointed capt of her by Duclos Billancq & company, french merchants at Marseilles, that the ships papers were made out in the name of John Baptisto Caybiso as well as the bills of parcels for the outward bound cargo; all which were made to cover French property by Duclos Billancq & company in order to save the cargo which belonged to them; & all this fully appears by the deposition of Claude Germain Lieut of the settee La Conception & a subject of the French King.

By the several depositions & exhibits in this case of the Pollacca St Joseph it appears that the marriners are genoese, that Michael Angelo Michaelle the supercargo was a Genoese, & purchased & shipped these Goods; that is if the exhibits are genuine. The presumption that they are not so, is that the settee La conception was commanded by a Genoese captain & the Goods purchased & shipped in his name, tho they

truly & Bona fide belonged to duclos Bellanq & company,—french merchants at Marseilles.

That the pallaca St Joseph is a Genoese vessel, that the capt^t & supercargo are both genoese, that the cargo was purchased & shipped by the supercargo; from which this conclusion is drawn; that as the goods shipped on board the settee La conception were french, therefore these shipped on board the St Joseph are also french property. That they may be french property is very p[ro]bable, but that they are really so, I don't think that the proof or presumptions are sufficient to make it out. I allow it is very reasonable to think that if duclos Bellanq & company, or any other french merchants Imagined that method would have saved their property from falling into the hands of the english, they would [not] have refused it. How far they have pursued it in this case must depend upon the depositions & exhibits, & by them it is plain that the cargo is genoese property, & as such I acquit it, except six barrels of flower, & one or two small Trunkes of shoes, a Box of medicines, and some Instruments belonging to the surgeon (as is mentioned in the claim) which is clearly french property, which I condemn as Lawfull prize &c.

JOHN BIGGS CASTRIOT VS CHARLES NICOLL
AND WILLIAM WADDELL

No action in the Admiralty lies to enforce a contract, in respect of division of prize money, made on land.

(Libellant was surgeon on the Privateer *Oliver Cromwell*, owned by respondents. He sued for prize money said to be wrongfully withheld. A plea to the jurisdiction was offered.

Mr. William Smith for libellant;

Mr. William Livingston for respondent.)

May 8, 1759 In this case I am clearly of opinion that

the Admiralty have no Jurisdiction. The Prizes with all their lading taken by the Oliver Cromwell were condemned in this Court as Lawfull prizes & if John Bigs Castriot is entitled to anything taken on these prizes it is by a contract made on land previous to the capture, and whether that contract has been complied with or not must be determined in the Courts of Common Law. Therefore I Dismiss the Lybell.

JAMES DONISON ET AL VS SHIP PETER AND LADING.
THOMAS LAWRENCE ET AL VS JAMES DONISON ET AL.

A Dutch ship laden with goods obtained in a French Colony, and sailing with a French passport under convoy of a French man-of-war, *held* to be a French vessel for purposes of prize. Her cargo also condemned.

Unless the evidence shows that a privateer's presence and approach struck the enemy with terror, and so contributed to her surrender, such privateer is not entitled to share. Merely being in sight at time of capture is not enough.

(The ship above named, documented as Dutch, was proceeded against as prize to the privateers *King of Prussia* (Captain Donison) and others.

Mr. David Mathews for libellant;

Mr. James Duane for claimants.)

May 26, 1759 The Judge delivered his opinion in the words following viz The case of this ship is attended with some particular circumstances that I have not met with before during the course of this war: that is her sailing under convoy of a french ship of war. By this act she publicly avowed herself to be a french ship, and to be loaded with french effects. She made use of the common colouring, such as obtains a permission from the West India company, to go to Coraçoia & those that fitted her out for the voyage consigned her cargo to merchants at Coraçoia; at the same time she was possessed of a passport from the french King to

load at St Domingo, & her cargo consigned to two french merchants there. What I would observe as a thing very extraordinary is there is but one bill of Loading for the whole cargo.

It appears fully by all the papers, that the ship and cargo is french property: the cargo is of growth & manufacture of the french Islands, and shipped from thence by french merchants: the ship hath a french passport, making of her a french bottom to all Intents & purposes: giving her by that means the same privileges their own ships are Intituled to,—& bound to france. I therefore adjudge & condemn as Lawfull prise the ship Peter with her lading &c.

(The privateers *Royal Hunter* and *Tartar* asserted an interest in the prize by independent libel against the original libellants. The testimony (*semble*) was taken simultaneously in both cases, which were argued together.

Mr. William Livingston for intervening libellants;)

Aug 1 1759 The Judge Delivered his opinion in the words following viz These causes have taken up a Great deal of time; the depositions alone amount to one hundred and twenty two, besides the Exhibits: therefore my not giving that Dispatch that is usual in courts of Civil Law Jurisdiction is owing Intirely to the prolixity of the proceedings.

The Libellants have endeavoured to prove, as appears by the depositions of the capt^t officers & crew of the ship Peter, That the King of Prusia, Sturdy Beggar and Royal Hester were the only privateers that took & manned her, & that no other privateers were in sight at the time of the Capture, but those three. That is, they swear they saw no other. John Francis Pairieu first Lieutenant of the prise ship the Eagle, in his deposition says he saw five vessels, which he took to be English privateers, the same morning, four hours

before that the ship Peter was taken; that he was on the Quarter Deck of his own vessel, when he saw the said ship Peter taken; that he then discovered five vessels, that he took to be English privateers; that he made a memorandum of it in his Journal; he refers to the Exhibit A, which he thinks to be a just representation.

Jaques Harmand second capt^t of the prise ship the Eagle, also refers to Exhibit A; and farther says that it is Impossible for him to tell whether the people of the prise ship the Peter could know whether they were English privateers: that he does not know whether the two farthest privateers had colours flying, & he Questions if they had whether the people of the prise ship the Peter could see them at that distance.

If the Exhibit A is a true representation of the scituation of the privateers prizes & french Fleet, they might have seen the privateers Tartar & Hunter. Indeed John Barns one of the men on board of the Tartar says he saw the prise ship the Peter strike, but then he was at the masthead. By some of the claimant's evidence, it appears they were both in sight.

Upon the whole of the Evidence this question arises, whether being in sight at the time of the Capture Intitles the privateers to a share of the prise; & that will appear by considering the Law in the case. By way of Illustration, suppose A & B, two privateers are in chace of the ship C a vessel belonging to the enemy, & a ship of force (the ship D), another privateer, appears in sight of the enemy, and makes all the sail he can to come up with the ship C; but before the ship D gets up, the ship C strikes, and is taken by the privateers A & B. In that case the ship D shall be Intituled to a share, because it is supposed she struck a Terror into the people of the vessel C, which induced them to yield much sooner, & consequently saved the effusion

of a Good deal of blood: but a vessel only being in Sight, without aiding or assisting the privateers that were in chace of the enemy's vessel, or endeavouring by all means to come up cannot be Intituled to a share: for striking a Terror into the Enemy is aiding & assisting.

The Law is plain in the case, that the privateer appearing in sight must strike a Terror, & if she does not do that, her only being in sight cannot, nay ought not to Intitule her to a share. Suppose for Example 2. 3. or (more) privateers are in full Chace of a vessel of the enemy; one nearer than the other, but in such a scituation as all to be plainly discovered by the Enemy; in that Case they are all Intituled to a share, tho one privateer boards the vessel before the other.

In these particular cases there is a draft made of the scituation of the french Fleet, the prise ship the peter, and the several privateers in sight & pursuit of her, with a scale of miles: which Draft was made, I suppose, by some person on board the prize ship the Eagle or the Juno, & it may be a very just representation of their scituations; & I suppose it appeared so to the person that drew it. At the same time it is to very little purpose, what opinion persons on board of other vessels might have of privateers in sight of the prise: for this reason, that the only Impartial & of course Legall Evidence in this case are the officers & marriners of the prise ship the Peter,—who all to a man declare they saw no other privateers at the time of their being taken than the King of prusia, Sturdy Beggar & Royal Hester; & that they took them, & by them they were manned, & sent into this port. Those they did not see could strike no Terror; Therefore I am clearly of opinion that the owners & companys of the privateers King of prusia, Sturdy Beggar & Royal Esther are only Intituled to the prise ship the Peter with her boat &c.

I order & decree that the claims of Thomas Lawrence com^r of the privateer Tartar & John Harrison com^r of the privateer the Royal Hunter be dismissed &c.

ROBERT TROUP ET AL VS SNOW SNALLY LOPER
AND LADING.

Considering the conduct of the Dutch during this war, and for more than three years before decision given herein *held* that their sea documents were not entitled to the weight usually given such papers.

Circumstances of suspicion enumerated, sufficient to justify condemnation of goods of French origin found on a Dutch ship.

(The snow above named was proceeded against as prize to the privateer *Sturdy Beggar*.

Mr. Benjamin Kissam for libellant;

Messrs. William and Thomas Smith for claimant.)

June 20 1759 The Judge delivered his opinion in the words following viz I have considered the proof & the arguments of the advocates in this cause, and the presumptions that were raised against the cargo have the greatest weight with me; as the lading was taken in at Curaçoa, an Island of merchants who are known to be factors for the enemy, & who for the sake of that Immense profit arising from the passage of french effects thro their hands, and in dutch bottoms, have contrived by every art to conceal the goods of the enemy, and to cover them under their own name, & the ordinary documents used by the Subjects of the States General.

A people who have thus abused that faith which by the Law of nations ought to be held sacred & Inviolable, cannot Justly require the same credit to be given to their documents, which used to be allowed them. And if higher proof is now required by the Courts, especially of that nation which suffers by their practices, than was formerly thought sufficient, it is a reasonable & necessary consequence of their not distinguishing by

the ships papers (as good faith required) their own goods from those which belong to the enemy.

These things being considered, I think there is great weight in the presumptive circumstances urged in favour of the Libellants:

(1st) Many of the Goods have marks not agreeing with the names of the shippers or consignatories; and as it is usual for merchants to mark their goods with their own names, it is probable that these belonged to persons whose names are concealed with design,—Especially as most of those goods are of the growth of the french Islands. (2d) Some of the Goods clearly appear to be the produce of the french Islands, and so the dutch mate deposes; and therefore as they once belonged to the Enemy & no transfer appears, the presumption against them is not taken off by concluding proof. (3d) The producing a paper to the com^r of the french frigate, which was before, & still is concealed, is a very suspicious circumstance. (4thly) The real Loss of the bag of Letters does not appear to be well made out, for as to what the claimant denies with respect to one & deposes relating to the other, he has the misfortune to be contradicted by three witnesses; Simson & his own mate swearing to his possession of the bag of letters after the first capture by Horton,—& Bridges asserting in a particular & positive manner that a paper was shewn to Chateleau which had always before that time been concealed.

For these reasons I am of opinion that the enemy have some Interest in the voyage, but I don't conceive that it extends farther than to such goods as are of the produce of the french Islands; & therefore I condemn all that part of the Lading which consists of Sugar Coffee & Indigo as Lawfull prize to the Lybellant according to the prayer of the Libell; but the Snow after she is unladen I adjudge to be restored to the

claimant with the residue of the cargo, upon payment of the acquital fees.

NICHOLAS HORTON ET AL VS SHIP SEA POST AND
LADING; DAVID MUSHART, CLAIMANT.

THE SAME VS SHIP DOLPHYN AND LADING;
JACOB SPIN, CLAIMANT.

The Court may appoint an advocate in a private suit, on the proctor's application.

It being notorious, and especially known to this Court, that the Dutch carry French goods pretending them to be Dutch, the proven fact that goods found in a Dutch bottom were once French raises a presumption that enemy ownership still continued.

Confusion of marks strengthens such presumption.

Original libels may be filed to recover moneys paid under a decree reversed.

(In these suits Horton as captain of the privateer *Johnston*, asserted the ships named to be lawful prize. Both were captured shortly after leaving Curaçao, bound for Holland, and showed Dutch papers.

Messrs. Richard Morris and William Smith, Jr., for libellant;

Messrs. Whitehead Hicks and William Smith for both ships.

Shortly after libel filed Mr. Hicks applied to the Court to appoint an advocate for the claimants. Whereupon the Judge appointed Mr. William Smith as being the "oldest practitioner of the Court."

In the case of the *Dolphyn*;))

June 20 1759 The Judge delivered his opinion in the words following viz This ship took in her lading at Curaçoa, which is a circumstance not much to the advantage of the claimant, for it is universally known to be true, that the enemy, finding no better method of maintaining their american trade, have for some time past transported their effects by the way of the dutch Islands of St Eustatia & Curaçoa.

The Immense wealth thereby brought to the Inhabitants of those Islands, which produce little or nothing themselves, has Induced them to continue all possible arts to conceal the Interest of the enemy, from our men of war and privateers: and therefore have blended french effects with their own, lent their name for a cover, & contrary to all good faith Documented the whole ladings as the property of Dutch subjects.

Such being the case, it is natural to presume against all those cargos, coming from those Islands, consisting of goods which are the growth & produce of the dominions of the french King. If the merchants of St Eustatia & Curaçoa had distinguished french Effects from their own, the ordinary documents would have been sufficient, & had the weight allowed them by the law of nations; but if the Inhabitants conspiring with the enemy, make it their constant practice to cover all under one general disguise, the common Documents ought in strait Justice to be considered as weak proof, & the hardships ariseing from the demand of more Evidence is Imputable only to themselves. It is certainly unreasonable to ask for credit to papers which are every day perverted to conceal the Interest of the enemy, & therefore publickly known to declare what is false.

On these principles I should have adjudged that part of the Cargoe which is of french growth as liable to confiscation, were there no other circumstances that give ground for a suspicion; but first, there appear to be marks on the goods, which correspond neither with the name of the shippers nor consignatory & it is usual to mark them with the Initials of the owner's name; tis probable they were marked by the proprietors or their agents in the french Islands, & tis observable that this variation between the marks & the names of the shippers & consignatories holds in most, if not all the goods

of french growth, & not in the other articles which are of the produce of Caraçoe or other country belonging to the friends of Great Britain; secondly there is no proof of the Transfer of the french articles from the original owners to dutchmen; thirdly many of the bills of lading do not specify upon whose account the Goods were shipped; & fourthly there is full proof that two cask of Indigo belonged to a frenchman residing at St Domingo. Therefore I condemn all that part of the lading consisting of sugar coffee & Indigo as prise to the Libellant according to the prayer of the Libel, but the ship, after she is unladen, I adjudge to be restored to the claimant with the residue of the cargo, upon payment of the acquital fees.

(In the case of the *Sea Post*, on the same date, the following opinion was delivered:)

This ship took on her lading at Caraçoa, & as the Inhabis of that & the Island of St Eustatia have been for some time past publick factors for the enemy, have carried on their trade in Dutch bottoms, lent their names to conceal the property of the French and have covered all under the ordinary documents; there is great ground to suspect that the enemy owned that part of the lading which is of the growth & produce of the french territories in america.

If this was not publickly & universally known to have been of late the practice of the merchants of those islands, the common Documents would have deserved full credit according to the custom of nations; but since they falsely declare all to be dutch, & are abused contrary to all good faith, to maintain the commerce of the french, they ought to be considered as very weak proof, and the conduct of the people of Curaçoa & St Eustatia has rendered it necessary to call upon them for something more than the ordinary Documents.

Those articles which are of the growth of the french Island are Justly to be presumed to belong to the enemy, unless a transfer to dutchmen appears by full and satisfactory proof; but there is no proper evidences offered to this purpose: besides as many of the Goods are marked with the Initials of unknown names, not corresponding with the names of the shippers or consignatories, it is probable they bear the marks of the name of the true owner, and as this observation holds with respect to most, if not all, the goods of french growth, it is not unlikely that the marks were made and the goods owned in the french Islands, & lastly many of the bills of lading (contrary to common usage) do not specify upon whose account the effects were shipped; wherefore I condemn as Lawfull prise all that part of the lading which consists of coffee Indigo & sugar; but the ship, after the goods are unladen, I adjudge to be restored to the claimant, with the residue of the cargo, upon payment of the acquital fees.

(These cases were appealed by the claimants of cargo and both reversed (Marsden, p. 206, notes the *Sea Post* only.)

Thereupon, and on February 16, 1762, the claimant-appellants filed original libels against the owners of the Johnston and their stipulators in these cases, praying decrees for the amount received by respondents (or some of them) under the decrees reversed, with interest at six per cent and all costs and fees paid to counsel. No objection was made to this form of procedure nor to any item of damage. The records show that large sums were recovered but (*semble*) much less than the aggregate loss suffered.)

SAMUEL LITTLE ET AL VS SLOOP MARY AND LADING.

A "flag of truce" or cartel for exchange of prisoners, is not only secure from capture herself, but goods obtained by British subjects while in the enemy's country (and on the cartel), belonging to such subjects, are not lawful prize when found on board said cartel.

(The *Mary* had been seized as prize by the privateers *Johnson* and *General Johnson*.

Mr. Richard Morris for libellants;

Mr. William Smith, Jr., for claimant.)

Sept. 7 1759 The Judge delivered his opinion in the words following viz It clearly appears that the sloop *Mary* was commissioned as a flag of Truce by his Excellency George Haldane Esq^r governor of the Island of Jamaica, to carry down french prisoners to port au prince upon the Island of Hispaniola; which voyage he performed and in his return for the Island of Jamaica he brought back seven English prisoners; but before his arrival was taken by two English privateers, & sent into this port, having on board (as is in the *Lybell* suggested) goods & effects belonging to the subjects of the french King.

What at present lies before me to Determine is whether the sloop *Mary* with the *Lading* & effects on board, are Liable to confiscation pursuant to the prayer of the *Lybell* or not. As for the sloop *Mary*, I think her commission as a flag of Truce protects her from the King's Enemies as well as his Subjects. The Goods & effects on board appear by capt^t Richard Curtin's deposition (which is the only one taken in the Cause) to belong to himself and several other merchants at Jamaica; that he had no prohibited goods on board; that he is a subject of the King of Great Britain, and an Inhabitant of the Island of Jamaica and has resided there for seven Years last past.

The Goods & Effects appearing to me to be the prop-

erty of English subjects I do hereby order & decree that the sloop Mary (&c.) and lading be restored to Capt^t Richard Curtin, and that the Lybellants pay all such costs as shall be Taxed against them by this court.

LUKE THOMAS VS ROBERT BRYSON.

Throwing punch in another's face is an assault. Damages assessed at twenty shillings.

(Libel for assault *super mare altum*.

Mr. William Smith, Jr., for libellant;

Mr. Thomas Smith for respondent.)

Sept. 22, 1759 The Judge delivered his opinion in the words following viz I think it would have been the most prudent step the parties could have taken, to have compromised these Disputes between them, & not brought them to be canvassed in a publick court; but as they have not done that, it now lyes with me to determine the matter. Upon the whole of the Evidence, it appears that Robert Bryson assaulted Luke Thomas by throwing punch in his face; for which I order and decree that he pay the said Luke Thomas twenty shillings current money of New York with costs of suit hereafter to be taxed.

SAMUEL BULL VS THE HOSTAGES FOR THE RANSOM
OF THE SCHOONER L'ESPERANCE.

Hostages recaptured may be physically restrained or confined, in order to enforce payment of salvage on the ransom, to secure which said hostages were held by the enemy.

(Captain Bull while in command of H.M.S. *Jupiter* recaptured from the French certain men held to secure payment of ransom, agreed upon by the owners of a British schooner theretofore captured by the French.)

Dec. 15 1759 On motion of Mr. Richard Morris proctor for the Lybellant, proclamation was again three

times made for any person to appear that had ought to say why the ransom bill and the moneys due thereon in the *Lybell* mentioned, should not be condemned, and the Hostages detained according to the prayer of the *Lybell* to come forth and they should be heard; & no person appearing to claim or defend the same the Court ordered the third default to be entered; whereupon the said proctor prayed that the preparatory examination taken in this cause might be made publick & that he might now proceed to the hearing of the Cause, which was ordered accordingly: and thereupon the said proctor opened the *Lybell* & proceedings & the preparatory examination of Jean Diense & Jules Jean being read, and it appearing thereby that the several facts charged in the said *Lybell* with respect to the Capture & ransom were true, therefore the Court does adjudge sentence & decree the moneys due by the same ransom bill to be paid, & that the Hostages be detained till payment thereof.¹

LA CONSTANCE.

In a case of some doubt, justice may be substantially done by withholding costs, though granting an award.

A privateer may take a prize, though her Captain be absent ashore.

A share given a privateer in sight at time of capture, but without costs, the Court being doubtful whether said privateer materially contributed to surrender of the prize.

(The French ship above named struck to the privateer *True Britain*; the *Great Pitt* claimed a share for reasons appearing in the opinion. Captain Hansen of the *Great Pitt* was not aboard at the time of capture; he had remained ashore at St Croix but sent out his lieutenant (Croker) in command. Hansen and Croker for their owners and company interposed

¹ See *Le Soleil*, ante. The inference is irresistible that, in order to secure salvage on ransom bills, incarceration of the hostages appeared to be necessary.

their demand by way of claim and answer to the libel of the *True Britain*.

Mr. William Smith, Jr. for the *True Britain*;

Messrs. William and Thomas Smith for the *Great Pitt*.)

March 6 1760 By the strict rules of law Hansen's commission by the Express words of it, could not be a sufficient power for Croker to act by, till after Hansen's death; yet I think Equity Intitules the owners of the *Great pitt* to a share, as being in sight & using her endeavours to come up and make prize of the ship *La Constance*. Yet by the depositions of Cap^t Vance & John Jules who was a passenger on board of the *constance*, [these witnesses] declare the sloop struck no Terror; on the contrary that they could have taken the *Great pitt*: this appearing to be the true state of the case, I order the Lybellants & claimants each to pay their own costs.¹

GEORGE SPENCER QUI TAM &C. VS WILLIAM RICHARDSON, FRANCIS WELCH AND SAMUEL TINGLEY.

A plea to the jurisdiction presents an issue that must be decided before any further pleading is proper.

A party who does plead over is liable for the costs thereby incurred.

A statute giving jurisdiction to the High Court of Admiralty and to any chief court of civil or criminal jurisdiction in any colony, does not comprehend the Court of Vice Admiralty.

(Libellant informed against respondent for sundry violations of Customs laws, the particulars of which the records remaining do not disclose. The penalties claimed amounted to £4,000 Sterling; and authority for the suit was alleged to

¹ It appears by the record that the shares of the two privateers were adjusted in the same manner as in the case of the *Oliver Cromwell*, ante; i.e., the *True Britain*, being of 125 tons with 71 men, received 196 parts, and the *Great Pitt*, of 44 tons and 12 men, was awarded 62 parts, of the proceeds of the prize.

exist in 30 Geo. II, cap. 9, authorizing the recovery of such penalties in the Courts enumerated in the opinion.

Richardson appeared and pleaded to the jurisdiction; but only upon the ground that whatever wrongs were alleged in the libel had been committed in the East Ward of the City of New York, and not upon the high seas or within the jurisdiction of the Admiralty.

After the tender of this plea, libellant replied and Richardson rejoined; thereupon)

July 19 1760 Mr. Alsop moved that the def^t should argue in support of the plea to the Jurisdiction of the Court, to which Mr. Smith Jun^r objected; contending that the proceedings had been carried into an Irregular extent, & that by the practice of this Court a Replication & Rejoinder were unnecessary on filing a plea to the Jurisdiction of the court.

The Court declared its opinion that the prosecutor ought to pay the costs accrued by & since the filing of the Replication; and that those pleadings should be taken off the file: the practice being to set a rule to argue upon filing the plea to the Jurisdiction.

(The replication and rejoinder were then taken from the files and the jurisdictional question argued by Mr. Attorney-General for libellant;

Mr. William Smith, Jun^r for respondents.)

Nov. 12, 1760 Judgment upon the plea to the Jurisdiction delivered by the Commissary in Court;

My long Indisposition has prevented my giving my opinion in this cause before. What lies with me now to determine is whether this cause is properly cognizable before this Court; the case Quoted from Viner is not to this purpose.

The act of Parliament upon which this prosecution is commenced is a penal Statute, and as my Lord Chief Justice Holt, in his reports, Justly observes, that penal

statutes ought by Equity & reason be construed according to the letter of them & no farther;—this act of Parliament after ascertaining the penalties & forfeitures, declares where they are to be recovered, viz in the high court of admiralty or any other chief court of Civil or Criminal Jurisdiction in such respective Colonies or plantations: and as this is certainly not the high court of admiralty, but the court of vice admiralty in one of his majesty's plantations, and is so stiled in many acts of Parliament which hath given it Jurisdiction in several cases, I am therefore clearly of opinion it can have no Jurisdiction in this case; for which reason I dismiss the Lybell with costs to be taxed.¹

WILLIAM BAYARD VS BRIGANTINE YOUNG JOSEPH;
JOHN MILLIGAN ET AL, CLAIMANTS.

Upon the decease of his proctor of record, a party may be compelled to proceed and appoint another proctor.

A decree of condemnation as lawful prize, obtained in less than the twenty days allowed by statute for former owners to assert their rights on payment of salvage, is no bar to such owners' assertion of title, even as against subsequent vendees.

No appeal can be allowed after the expiration of the time allowed therefor by statute.

(The libellant's proctor, Mr. Nicoll, having died, pending a rule upon him to reply:)

June 20 1760 Benj. Nicoll Esqr deceased, being the proc^r for the Ly^t in this cause; ordered, on motion of

¹ The importance of this case is shown by the presence of the Attorney-General. No other instance is found. Morris, J., seems deliberately to have evaded the jurisdictional point raised by the plea and to have passed on nothing but the language of the Act. The crown authorities complained bitterly of this decision, they having relied upon it to punish customs frauds without jury. See Beer, *British Colonial Policy, 1754-1765*, p. 126.

Wm. Smith Esqr, That a Copy of the last rule made in this cause to reply, be served on Mr. Bayard.

(Bayard sued on behalf of Samuel Wentworth of Boston, who had owned the vessel above named in December 1757. She was then rigged as a schooner, was known as the *Hawke*, was captured by the French, condemned as prize, had her rig changed, was fitted out as a merchantman and renamed the *Young Joseph*.

In June 1759 the British privateers *Belleisle* and *General Wolfe* captured her, took their prize into Rhode Island and in six days or less procured her condemnation. Wentworth had no knowledge of the recapture or subsequent proceeding. By September 24, 1759 the vessel had been brought to New York, and was there sold at public auction to Milligan *et al* for £600. The claimants pleaded a purchase in good faith without notice.

Mr. William Smith, Jr. for libellant;

Mr. William Smith for claimant.)

July 26 1761 The Court did adjudge & Decree that the Brig^t the *Young Joseph* should be restored to the original owner or his assigns, he or they paying the one moiety for salvage, pursuant to the directions of the act of parliament; and that the claim^{ts} pay such Costs as shall be taxed by the Court.

(Subsequently and on October 1, 1761, Mr. Smith moved for leave to appeal; alleging that until that day he had never known of the decree. This Mr. Smith, Jr. opposed, and)

Oct. 2 1761 The Court is clearly of Opinion, That it is not in the power of the Court to grant an appeal,—the Time allowed by Law being elapsed.¹

¹ The technicalities of Mr. Smith, Sr., are not unamusing. Local history reveals no lack of family affection among the Smiths; but their professional differences certainly became acute when the father accused his son of concealing from him the decision of a case in which both were interested.

JAMES OMAN ET AL VS. SNOW GUILLAUME
LE CINQ & LADING

The proof showing a French owned cargo, the carrying ship also held French, notwithstanding the possession of a Dutch sea-brief.

An oath by a Dutchman that no "subjects of the enemy" are interested in a ship does not exclude the French.

(The vessel above named was proceeded against as prize to the privateer *Harlequin* (Captain Oman). Her name is throughout the case given in French or English, never in Dutch. The cargo papers very clearly proved French origin for the Lading, and indicated French ownership; but the vessel itself was not suggested as French by any remaining evidence.

Messrs. John Morin Scott and Richard Morris for Libelant.

The master of the Snow filed claim and answer, but there is no record of any advocate having argued on his behalf.)

March 9, 1761 The judge sent down his opinion in the words following Viz The preparatory Examination so plainly proved the property of the Snow & Lading to belong to the subjects of the french King, that it can admit of no doubt. The Capt^t acknowledged by his deposition that the Lading is french property, & that the bills of lading are coloured, & hath no proof of the vessel being the property of Dutch Subjects but his Sea Brief, by which it appears he hath sworn that the Snow named the prince William the fifth, of which he is at present master, is owned in the united provinces, & that no subjects of the enemy have directly or Indirectly any part or share therein. All which may be true, & yet she may be owned & belong to the subjects of the french King, for a subject of the french King may reside in the united provinces, & Daniell Janssen swears he was Informed, that at the time the said Snow was seized & taken, she did belong to persons of the french nation residing at Rotterdam. The Dutch are no enemies to the french. Therefore that part of the

oath may be as true as the other, & what is another Inducement to me to believe the owners not to be Dutch,—the owners appear to be novices in the art of colouring, which that nation is famed for.

Upon the whole I do adjudge & condemn the Snow with her lading as Lawfull prize &c

THOMAS LAWRENCE ET AL. VS. SLOOP PEARLE
THE SAME VS. SLOOP GOOD SUCCESS

A Dutch vessel carrying cargo out of a French port, as to which an agreement is proved that all outward and inward duties shall be paid in France, is in effect French, and as such condemned.

That an alleged Dutch sloop, when seized by English privateers, agreed to a ransom is a confession of French ownership. Such vessel, when subsequently captured on the same voyage by another privateer, condemned.

(The sloops named were captured by the privateer *Tartar* (Captain Lawrence) at substantially the same time and place. The causes were heard together.

Mr. William Livingston for Libelants;

Mr. Whitehead Hicks for claimant.

The opinion (in the *Pearle*) was as follows:)

March 9, 1761 That the dutch have been the carriers of the french effects during the war, is a fact well known to everybody. At the commencement of it their ships sailed directly from Holland to the french settlements, & there Loaded with french produce, which by false bills of lading well coloured & the most solem oaths they protected the Enemy's property from falling into our hands. Notwithstanding all which their art was at Length discovered by Intercepted Letters, & their oaths proved to be false by the most uncontestible Evidence. Many of their ships then were condemned as Lawfull prize, & those sentences affirmed upon appeals being carried home to England; which soon obliged them to take other steps, & those were to

send small vessels from their own Islands (that lie contiguous to the french settlements) to bring up the french effects & lodge them in their hands, from whence they were shipt as Dutch effects, & sent to Holland; which rendered it very difficult to discover what were bona fide dutch & what french. To prevent these Inconveniencies they¹ have made it a rule to take all vessels that come loaded out of a french port, & condemn them as Lawfull prize, but that does not Effectually answer the end or Intirely prevent our good friends the dutch from assisting our Enemies. As for the sloop pearle there is full proof That she loaded with french effects, & it appeared by the permission to trade granted to Capt Glinsterman com^r of the sloop Pearle by philip Francois Bart Lieut. General of the french Leward Islands, that the said Capt is obliged to receive the value of the said cargo in the produce of the country, & that he shall pay the outward duties & Inward duties in france, which shews the effects were designed for france; but as the sloop Pearle came Loaden out of a french port with produce of the french Islands, therefore I do condemn her as Lawfull prize with her Lading &c

(The opinion (in the *Good Success*) was as follows;)

This sloop is in the same circumstance of the Pearle, with this one material difference; That in going down to the french Islands she was taken by three privateers, & agreement made between the Capt of her & the three privateers to ransom her. This is proved by the 8th Interrogatory of the preparatory Examination of Lewis Pedro, which fully proves her to be french property. Therefore I do condemn her with her lading as lawfull prise &c

¹ They, *i.e.*, the English men-of-war and privateers.

THOMAS LAURENCE ET AL. VS. SCHOONER
GEDULTIGHEYDT

The mere fact of obtaining and lading cargo in a French colony is enough to condemn a Dutch vessel.

(The vessel above named was alleged to be prize to the privateers specified in the opinion. She was documented as Dutch, and no evidence remains that sought to show her papers forged or false.

Mr William Livingston for libellants;

Mr Whitehead Hicks for claimant.)

Apl 27, 1761 It fully appears to me by the Several depositions taken in this cause that the Schooner The Gedultigheydt was laden with the produce of the Island of Hispaniola at Capo Francois. Therefore I do adjudge & condemn the Schooner with her boat &c & Lading as Lawfull prize for the use of Capt Thomas Lawrence & the owners & company of the Ship Tartar and for the use of Capt Sweet & the owners & Company of the Brig^t. Diana, the proportion each vessel is to share shall be according to the number of men & Tonnage of vessels.

(An appeal was lodged by the claimant, but subsequently withdrawn.)

JAMES TROY ET AL. VS. SNOW HALIFAX PACKET

A cause heard on an agreed state of facts.

The right of the original owner of a recaptured British vessel, asserted three and a half years after capture.

(The *Halifax Packet* (or *Nova Scotia Packet* as she is called by all the witnesses) was originally *The Polly*, built and owned by Troy of Dublin, Ireland. On Dec. 25, 1757, while on a voyage from Philadelphia to Dublin she was captured by a French privateer, taken to Louisburg and condemned. As a French vessel she was (*semble*) in 1758 captured by H.M.S. *Terrible*, taken to Halifax, condemned and sold to

one Franklin of that place, who in turn sold to Ball of the same city. As Ball's property, she came on a trading voyage to New York, where Troy libelled her on Aug. 6, 1761. The claim and answer of Ball did not deny Troy's right to retake the vessel on paying salvage as per the statute and compensation for betterments and equipment added since recapture.)

Oct. 9, 1761 On motion of William Smith Junr, proctor for the Libellts, and with the consent of Mr. Wm Livingston proctor for the claimants it is agreed that the following State of Facts in this cause, for shortening the Proceedings & saving expence be entered in the minutes of this Court in manner following;

1st That the Libellants do admit that the said Snow upon her recapture by the English was condemned and sold and that under such sale she became the property of the person or persons for whom she was now claimed as fully as by Law they could be entitled by such Recapture and sale.

2d That publication in this cause may immediately pass

3d That it be referred to the master and wardens of this port of New York, or the major part of them, to award and report what additions have been made to the Vessel since the said Recapture, and what is the value thereof; and also what is the value of the vessel & such part of her furniture and appurtenances which have not been so added.

4th That Mr. Hugh Wallace be appointed agent to sell the said vessel and all her appurtenances at public vendue, to the highest Bidder, and to receive and issue the produce of the sales pursuant to the decree of the court and the next following article in this agreement viz^t;

5. That if the produce of such sale shall exceed the amount of the whole appraisement by the said master and wardens, such excess shall be paid and divided

between the Libellants and defendants in proportion to the several appraisements of the additions, and the Hull and appurtenances; and *vice versa* if the sales amount to less than the whole appraisement

And lastly that this agreement should be made part of the proceeds in this cause.

Nov. 27, 1761 The judge delivered his sentence and decree in the words following to wit It appearing by the Reports of the Wardens and of Mr Wallace agent for sales that the Snow was valued at eight hundred and forty pounds. That the additions were valued at four hundred and sixty eight pounds and the Residue at three hundred and seventy two. And the sale amounting to six hundred and forty pounds, and the proportion being (pursuant to the former Rule & agreement) for the Hull two hundred and eighty three pounds eight shillings & nine pence, and the additions three hundred and fifty six pounds eleven shillings and three pence;—I do therefore order and decree that Mr. Wallace pay out of the produce of the sales to the Claim^t for salvage one eighth amounting to thirty five pounds eight shillings and seven pence,—for vandue master's fees six pounds eleven shillings & nine pence, —and for the Claimant's Costs twenty six pounds fourteen shillings and seven pence, and for additions three hundred and fifty six pounds eleven shillings and three pence, for wharfage two pounds seventeen shillings, for appraisement three pounds. And that the residue of the money in his hands be paid to the Libellant (after Deducting the Costs due on the part of the Libell^t) as his original property.

JOHN SMITH VS. WILLIAM HANNAH ET AL.

After publication ordered, testimony can be taken only by special permission. Such permission accorded, as to witnesses at sea during the pendency of suit, until after such order made.

An action for insubordination and attempted mutiny, by master against seamen, *held* not maintainable on the evidence.

(Libel for insubordination and attempted mutiny by ship-master against three seamen, viz. Hannah, Sandison, and Cook.

Captain Smith alleged in his libel that in the summer of 1761 the Sloop *Marquis of Granby* under his command made a round trip from New York to Quebec and return, the respondents having duly signed as seamen for the voyage.

That on the homeward trip there were on board as passengers certain soldiers of His Majesty's forces and that respondents furnished both their fellow seamen and the soldiers with liquor and kept them continually drunk.

That at about midnight of July 17th respondents conspired and agreed to assume command of the sloop and take her wheresoever they wished, and signed a paper to that effect; they gave out threatenings of bodily harm against libellant, and refused their duty so that he was obliged to arm for his protection, and personally stand to the helm, the respondents opposing libellant and his mate in the performance of their duties;—all to the terror of those on board, the danger of vessel and lading, and the “Evil example of all others in like case offending.” Libellant therefore prayed an “Exemplary recompence.”

The respondents admitted their possession on board, by agreement with libellant, of rum as a private venture; denied any large sales, or any drunkenness; admitted that they had respectfully remonstrated with Captain Smith against his returning to New York by way of Sandy Hook instead of going through Long Island Sound;—he having agreed to pursue the latter course both going and coming in order to avoid British men of war that lay off the Hook and pressed seaman. In consideration of this agreement respondents

alleged that they had shipped at ten shillings less per month than the regular wage of mariners.

Messrs. William Smith & Whitehead Hicks for libellant;

Messrs. William Smith Jr. & Thomas Smith for respondents.

Issue having been joined on Sept. 15, 1761, by the filing of a rejoinder, depositions were taken and publication ordered. Thereafter libellant moved for leave to take additional testimony, viz: the depositions of two members of the sloop's crew, who had been at sea *pendente lite*, and two women passengers. In opposition respondents filed an affidavit that the women had been in town ever since libel filed and that their evidence could have been procured at any time with reasonable diligence.)

Nov. 27, 1761 On motion of Mr. Thos. Smith an affidavit of two of the defendants was read and filed, whereon he moved that the four witnesses now offered by the Libellant might not be examined; but on motion of William Smith Esqr Ordered that Ephraim Shaw & Nathaniel Caldwell, two marriners lately returned from sea with Capt Smith be examined; and that publication be prolonged till Fryday next.

(The depositions when opened showed that the crew of the *Marquis of Granby* consisted of master, mate and six seamen, also a pilot for Nantucket Shoals, who had been taken aboard on the outward voyage and set ashore on the return at "Martin's Vinyard." That the respondents had shipped at £5.10 per month, whereas by most of the witnesses £6 was a seaman's wage, and all the respondents were capable sailors, especially Sandison, for whom Captain Smith had tried to get a mate's berth while in Quebec.

On the return from Quebec the *Granby* had carried as passengers in the steerage two sergeants, eight privates and twenty-six women and children of the 15th and 35th regiments of foot; and a Frenchman and his family and one or two Dutchmen in the cabin. Respondents were partners in a permitted private venture of rum and cheese; they had sold twenty-two gallons of rum, mostly to the women; the soldiers

had their own stock, and had gotten drunk; but their sergeants declared only at Louisburg, where (against their officers' protests) Captain Smith had permitted them to go ashore. All the witnesses agreed that no sailor had been intoxicated on board ship. Libellant himself had informed the sergeant at Quebec, that they need lay in no supply of liquor for the voyage, as the respondents could furnish it at 3s 6d per gallon, and he had himself bought some.

As to the charges of insubordination it was proved that both Cook and Hannah had refused to prepare food for the cabin passengers, they having been shipped as seamen; but professed themselves willing at all times to do this for the officers and crew.

The mutiny or protest against going by Sandy Hook, consisted in respondents' collectively and publicly complaining on July 17th that Captain Smith was breaking his agreement (not in the articles) to go and come by the Sound; when being off Block Island with a fair wind for the Sound, he began to beat against it, in order to get to the south side of Long Island. It was proven that respondents had often told their shipmates of this agreement with them, and that when they claimed its fulfilment the Captain replied that they could show no writing for it, and that he would do what he pleased. Clearly the respondents and one or two others of the foremast hands had not done full work on July 18th and perhaps thereafter; but by the weight of evidence this was because the Captain forbade them.

On approaching Sandy Hook two vessels were seen apparently bearing down on the sloop, whereupon the Captain put the small boat over side and sent all the seamen (except Hannah and Cook) in it, in order to escape the press should the approaching vessels be men-of-war. One witness, to whom libellant had applied to be his stipulator for costs in this suit, deposed that Captain Smith had stated to him, that Cook and Hannah were kept on board to get them pressed, but that Sandison was permitted to go in the boat because he was a "countryman" of libellant's.

The written mutinous agreement alleged in the libel was described by Corwin (alias Caldwell) in terms favorable to

libellant's contention; and by Sergeant Crane as a round-robin proposed by Sandison (who alone of the respondents could sign his name) but never executed; the substance of which was that the men liable to impressment should take the small boat and flee the sloop. To this Crane had objected and told the seamen that for the safety of the passengers, he would forcibly oppose it with his men, and thus stopped the plan.

It was proven to be untrue that the Captain had stood to the helm or otherwise done seaman's work.

The case having been argued the judge took the papers to his residence at Morrisania, and thereafter wrote and despatched to Mr. Thomas Smith the following note:)

Morrisania Dec 14, 1761

Sir

As to The Libell filed by Capt^t Smith against The Defts your clients in the court of Admiralty It appears to me to be a very Malitious Prosecution. Therefore it is my orders That The Libell be Dismist and That The Lybellant Pay such costs as shall be Taxed by the court

I am Sir

Your most hum^{ble} Servant

Lewis Morris

(The Register filed this, endorsed "Decree," and noted the fact of dismissal in the minutes as of the date of letter.)

DENNIS MCGILLICUDDY & C VS. SLOOP ESPERANCE

A vessel claimed as Dutch, but laden in a French port and proved to have used a French signal system in order to avoid English cruisers, condemned as presumptively French.

(The sloop above named was captured by the privateer *Mars* (Captain McGillicuddy) in the Mona Passage while going from Cap François to Curaçao. She was sent to New York and there libelled as prize. She had no papers on board that were produced in court; but was claimed by Jurian Dall, her mate, who swore that he was a naturalized Dutchman, that

the sloop was Dutch, hailed from Curaçao, and the cargo belonged to the owners. The pilot was French, and his log (produced) showed that the *Esperance* (or *Hope* as the witnesses called her) availed herself of a system of signals, devised by the French, to avoid English cruisers which habitually hovered near the Cape.

Mr. Richard Morris for Libellant;

No counsel appeared for Claimant.)

May 15, 1762 It is acknowledged that The Sloop *Esperance* Sailed from cape François, a french Port on the Island of Hispaniola. That she was there Laden with Sugar Coffee and Indigo, the Produce of the french settlements. That Pierre Alegre a subject of the french King's was the Pilot on board. It does not appear the french Pilot had any Property on board of her, yet both he & Jurian Dall Endeavor to prove that the Sloop & Lading belong to some Dutch Jews at Curacoa.

The Pilot's Journal puts the matter beyond any Doubt, for There I find on the 8th of March he says; from yesterday noon untill four o'clock in the evening we Turned up four Leagues Distance from the Cape, when we bore away for the Cape, in order to see the Signalls thrown out for us from the Vigil, to let us know where the English vessels were, & we discovered that they were in the N.East Quarter, Distant 7 Leagues: we then lay with our heads to the N.N.W. by The Compass & steerd that course.

These signals make it clear. It must be french property, and that all this Precaution Taken, to escape the English Privateers; for had the owners been Dutch men, There could be no reason for such actions, they being good friends and allys of the English. Except they so acted in order to Distress us, which I am sorry to say they have done in The West Indies During the War.

Upon the whole the Property appears to me to be French. I do therefore adjudge and Condemn The Sloop *Esperance* with her Boat guns Tackle apparel Furniture and Lading as Lawfull Prize for the use of Capt McGillicuddy The Owners & company of the Brig^t. *Mars* according to the Prayer of the Libell.

DENNIS MCGILLICUDDY ET AL. VS. SNOW JOHNSON &
LADING JOHN HOULTON ESQR CLAIMANT

Where one alleged captor of prize libels, and another claims, the claimant should be awarded the *res* upon abandonment of libel, the owners not appearing after three proclamations. The testimony stated in a case of trading with the enemy.

(On May 3, 1762 McGillicuddy as Captain of the New York privateer *Mars* filed libel against the *Johnson* describing her as French and alleging a capture near Heneager (Inagua).

Claim and answer was interposed by Captain Houlton of H.M.S. *Enterprise*, who denied that the *Snow* was French or that the *Mars* had captured her, or put a crew aboard otherwise than by collusion.

By the testimony of William Williams Master of the *Snow*, and of three members of his crew it appeared that the *Johnson* was American built, owned by Thomas White and Waddell Cunningham of New York, together with one Gregg of Ireland, that Williams and all the crew were British subjects, and that the vessel had loaded lumber fish and oil at New London for Port au Prince and return to New York via New London.

She had made the outward voyage, disposed of her Connecticut cargo in the French Colony through one McCarty, an Irishman there resident, and purchased sugar for the return. After leaving Port au Prince she was first stopped by a French privateer, and released on leaving a "Ransomer" on the French vessel; the terms of ransom do not appear. She then met the *Mars*, who put some men aboard. The *Johnson* then sailed toward New London, to which proceeding it does

not appear that the representative of Captain McGillucuddy objected. Off Fisher's Island the *Enterprise* put on a crew and sent the *Johnson* into New York.

Captain Williams deposed that he did not know whether the *Johnson's* trade was lawful or not; that all papers on board had been delivered to him sealed up; that he knew not their contents and that they had all been destroyed by his own orders.

The Advocate-General; Mr. William Smith and Mr. John Morin Scott for Capt Houlton; Messrs. Richard Morris and William Smith, Jr. for Captain McGillucuddy.)

May 22, 1762 On motion of Mr. Richard Morris proctor for the Libt proclamation was three times made in the same words as before and no person appearing to claim or defend the same other than the former Claim^t, ordered that the third default be entered as to all others. And on motion of Mr. Sam^l Jones in behalf of Mr. Smith Jun^r, ordered that publication now pass, & that this Cause be heard immediately. Whereupon the s^d Libell^{ts} proctor prayed Leave to withdraw his Libel; Libell^{ts} witnesses living so remote that they could not any of them be examined within the 20 Days limited by statute for that purpose; which was ordered accordingly. And the Depositions taken on the Standing Interrogatories & exhibits filed in the Cause being read with the several pleadings herein, and the Court having fully Considered the same, does adjudge sentence & Decree the s^d Snow and Lading as Lawful prize to John Houlton Esq^r Com^r of His Majesty's Ship the *Enterprize* &c¹

¹ The records contain frequent suggestions of collusion between privateers and illegal traders, but in few instances was there any endeavor to prove it.

In this case, and that of the *York Castle* (*post*), however, testimony has survived showing with remarkable fulness the flagrant conduct of some of the best known men in New York. It is quite

JOHN HOULTON VS. BRIGANTINE YORK CASTLE
& LADING
SAME VS. SLOOP SUSANNAH & ANN & LADING
SAME VS. SLOOP INDUSTRY & LADING

Testimony stated in three cases of trading with the French, during hostilities, by men of excellent commercial repute in New York.

(In May 1762 the three vessels above named were seized by libellant as Captain of H.M.S. *Enterprize* for trading with the Enemy. All were endeavoring to get into New York Harbor, all had sailed from New York laden with lumber oil fish dry goods and apples (or some of those commodities) had gone to Port au Prince or Aux Cayes, there sold their cargoes, bought and loaded French sugar and indigo, and attempted to deliver the same to merchants in New York. By the uncontradicted evidence of the Masters and Crew, all the men on board were British subjects; the *York Castle* and cargo belonged to Thomas Livingston and one Van Zoligen; the *Susannah and Ann* & cargo to Messrs. Kennedy & Keating; the *Industry* to Abraham Lot and Jacobus Van Zandt and her cargo to Waddell Cunningham, all of whom likewise were British subjects and citizens of New York.

All the masters deposed that they knew not whether the trade was unlawful or not, and admitted having destroyed all papers relating to their cargo, except Tunis Thew of Long Island Master of the *Industry*, who in answer to the appropriate question said "That he conceives no man is obliged to answer such questions as may affect or injure himself, and that therefore he cannot answer to this interrogatory."

No claim was interposed to any of these libels, and on)

likely that Cunningham and White were interested in the *Mars*; they certainly were in other privateers.

McGillicuddy was a frequent litigant, but seldom met with a defence requiring opinion. He was killed in action, August 28, 1762, probably before any return to New York after this exposé. His is the only fatal privateering casualty mentioned in the remaining court records.

May 25, 1762 The judge delivered his Decree in the words following to wit. I do adjudge and condemn as lawful prize the Brig^t the York Castle with her Boat Guns Tackle apparel furniture & Lading for the use of Capt Houlton and the officers & Marriners of his Majesty's Ship the Enterprize according to the prayer of the Libel

(A like decree was entered in the other cases.¹)

At a Court of Vice Admiralty held at the City Hall of the City of New York.

Present The Worshipful Richard Morris Esqr.
Commissary and Judge of the said Court.²

JOHN WILLIAMS ET AL VS SLOOP PROSPEROUS POLLY,
HER LADING AND ONE NEGRO MAN JOSEPH

Against a British vessel captured and held by the enemy fifty-nine hours, a salvage of one-third decreed.

A negro declared free (in the absense of any other testimony), on the repetition by witnesses *in preparatorio* of his own declarations.

(The Rhode Island sloop above named was captured by the French, while on a voyage from Martinique to Providence. Her own captain was taken on board the French captor, and the *Polly* put in charge of "John Baptiste Brown" (a native of Marseilles) who was directed to take her to St. Croix for condemnation. Within less than ninety-six hours the privateer

¹ Of the men above shown to be traders with the French, Lot was frequently Dutch Interpreter for the Court, Van Zandt was often a surety and well known ship owner, and Cunningham was a standing agent for sales, an appraiser, and an expert witness on market values. The other owners do not otherwise appear in the records, but Livingston and Kennedy were distinctly prominent citizens.

² Commission read in court August 10, 1762. It is printed in Benedict, p. 76.

Orleans (Captain Williams) recaptured the sloop and sent her to New York where she was libelled as prize.

Ebenezer Rumrill of Providence, one of her original owners, claimed; and tendered salvage.

The *Prosperous Polly* was of fifty-five tons, and at least three years old. Her hull, cargo and equipment was valued at £1354.18.5.

Joseph, the Negro, had come aboard with the French prize crew. Rumrill made no claim to him, nor had he any proctor. The interrogatories of libellant were so framed as to bring out all that those on board the *Polly* knew of him, and so enable the court to hear the matter summarily.

Brown testified that "the Spanish Negro [Joseph] he has reason to believe is a free man" for "Joseph entrusted him with an instrument in writing, requesting him to be careful of it, because it contained certain Prooffs of his Freedom, which should they happen to be taken by the English might be of service to him in his Captivity, and might deliver him from Slavery; but that unfortunately for the Poor Negro he the Deponent upon his hurry in proceeding with the *Prosperous Polly* to St Thomas left the said written Instrument in his Chest on board the French Privateer. Joseph according to what he hath heard the said Negro declare is a Native of Porto Rico;" . . . "and he had often heard him say he was a free man" Thomas Lomasney one of the original crew of the *Polly* deposed that Joseph had stated to him that he (Joseph) was free. The record contains no other evidence relating to the alleged slave. Counsel stipulated of record that the French had possession fifty-nine hours, and had added nothing to the capture except "the slave Joseph"; that Rumrill represented the original owners, and that the value of hull and cargo was as above set forth.

Mr. William Smith Jun^r for libellant;

Mr William Livingston for claimants.)

Sept 10, 1762 I do adjudge that the Sloop *Prosperous Polly* her Boat Tackle apparel Furniture Lading & appurtenances & Everything Else on Board of her in the Libell mentioned Except one Negroe called Joseph



A. W. Flinn & Co. Edmont, Mass.

L. Morris

1730-1810

B.A. YALE 1748; JUDGE-COMMISSARY IN ADMIRALTY 1762-1775; CHIEF JUSTICE OF
THE SUPREME COURT OF THE STATE OF NEW YORK, 1777-1790
FROM THE PAINTING IN THE POSSESSION OF MR. LEWIS GOUVERNEUR MORRIS, AT
HIS RESIDENCE "MALBONE," NEWPORT, RHODE ISLAND

be restored to the claimant for the former owners or Proprietors thereof, on his or their paying to the Libellant and captors for and in lieu of Salvage one Third Part of the now value thereof without any Deduction together with the sum of £80.8.6. lawful money of New York for the Libellants costs and charges. And as to the said Negroe Joseph I do further adjudge that he is a free man and therefore not Lyable to Condemnation.¹

JOHN HODGE ET AL VS SCHOONER CATHERINE
& LADING

A British vessel engaged in trade with the enemy or other illegal commerce cannot be condemned as prize to a privateer.

A vessel to which no claim was filed, and alleged to be French in hull and cargo so held, on oral evidence.

(The Schooner above named was seized as prize in the outer harbor of New London, Conn. by the privateer *Enterprise* (Captain Hodge), brought to New York and libelled.

No claim was interposed, but as appears from the facts below stated some question arose whether the cause was of prize or for illegal trade with the enemy.

The *Catherine's* last record ownership appeared to be in Van Dam & Livingston of New York City. In that port she had loaded bacon, hoops, flour and other colonial produce and sailed ostensibly for Jamaica. Her captain was James Hayt of New London, Conn., but her crew was composed as far as possible of men from Jersey and Guernsey who spoke both French and English, selected by one Jerbeau, a Frenchman, who according to the seaman witnesses appeared to exercise actual command, who also accompanied the schooner to Port

¹ In Appendix is printed the inventory of this vessel as showing better than any other document found the equipment of a small trading vessel of the period. The finding as to Joseph on such evidence marks a silent change of attitude toward alleged slaves from the days of the previous war. Roughly speaking, before about 1760, a black man had to prove his freedom; after that date no condemnations are found.

au Prince (she never went to Jamaica), there sold her cargo and loaded sugar and indigo for New London.

The mate, Isaac Whitney of Norwalk, Conn., testified that Jerbeau and one of the Jersey men frequently quarreled. Said Jersey sailor (François de Quitte Viele) deposed)

“Said Jerboo appeared on Board in all stations, sometimes he acted as a seaman, sometimes as master and sometimes as owner, and at Port au Prince he acted as Merchant or Super-Cargo of the said Schooner. That during the voyage he acted as one that has some authority over the Captain, as a Boatswain with Respect to the Sailors, and made them look like negroes, and as if they did not know their duty. That he intermeddled in the Cookery and that he is a sneaking sort of a fellow that an englishman would have nothing to do with. That he believes that the said Jerboe had the most Interest in the said Vessel and Cargo if he did not own the whole, because he carried so much authority over the Crew, and because he took the Star-board Birth in the Cabbins of the said Schooner which allways belongs to the Master in all Vessels. That one John Peltier informed this deponent that the said Jerboo had bought the said Schooner in the West Indies but is not sure whether in Cape francois or Mento Christi.”

(There was no other evidence of foreign ownership of either hull or cargo. When the *Catherine* arrived at New London all her papers were taken ashore in Captain Hayt's pocket, who on his return stated to both Whitney and de Quitte Viele that Captain Hodge was in port with a privateer that “would spare no Vessel” or “would spare no flags of Truce or Vessels on a Trade with the french West Indies.”

Captain Hayt did not testify and his papers were never produced. Hodge seized the *Catherine* the day following her arrival at New London and promised the seamen to secure them their wages. All the Frenchmen on board went ashore

before seizure. The libel asserted the schooner and cargo to be French.

Messrs. William Livingston and John Morin Scott for Libellants.)

Sept. 18, 1762 I have perused and considered the Proofs and Arguments in this Cause—And think it Proper to Observe that I am Clearly of Opinion that the property of an English Subject made out by Clear and concluding Proof is not Subject to Condemnation as Prize to any private Vessell of Warr Tho taken in any unlawfull or forbidden Commerce. Tho it may be forfeited when informed against by proper Officers Legally Appointed to Carry into Execution the Acts of Trade.

The Depositions *in preparitorio* in this Cause Induce a Belief that this Vessell and her Cargo are the property of an English Subject. Had this been made out by Clear Proof I should have thought it my Duty to have Acquitted her and Should have Left the Offender to have been punished for his Crime by fine Imprisonment or otherwise by Prosecution at the Suit of the Crown as the Law Directs. But upon Examination into the further proofs it Appears That this Schooner came from a french Island Loaded with the produce of that Island, that one Jerbeau a Subject of the french King Sometime Since Bought and brought her from Cape Francois at which time She must have been his property or the property of other french Subjects and there Appears no Evidence to Show it was Ever Transferred to any Brittish Subjects. Jerbeau Appears to have been During this Voyage in this Vessell, and to have had the Principall Agency not only in the Mercantile part of her Voyage but also in the Hireing and Dischargeing her Seamen; that he a Subject of the french King, Sold her outward Cargo and Bought the Return Cargo which is now on Board and there is not the Least Evi-

dence that the property was Ever Transferred or that he Bought for any British Subject. It Appears that the Documents both for the Vessell and her Lading were Secreted from the Lybellant at the Capture and have not been Discovered Since These Proofs & Circumstances, with that of their being no Claim Interposed for her, fully Convince me that Jerbeau and Other Subjects of the French King are the Owners of this Vessell and Her Lading. And Therefore I adjudge and condemn the schooner Catherine and her lading as lawfull Prise for the use of Capt^t John Hodge and the Owners and Company of the private Vessell of Warr the Enterprise agreeable to the prayer of the Libel

JAMES WRIGHT ET AL VS BRIGANTINE LA
VERITABLE & LADING

Facts in a case of admitted salvage on a recaptured vessel stated, and value agreed upon.

(The Brigantine above named, (of 120 tons, 4 guns and 12 swivels and fully equipped) was proceeded against as prize to the privateer *Flying Harlequin* (Captain Wright).

The following stipulation filed)

Oct. 22, 1762 In order to save expence the Following Facts are to be agreed upon and Admitted by the Parties as a Foundation for the Judge to give his decree upon in this cause—(Viz^t.)

First—That on or about the First day of February in the Year of our Lord one thousand seven hundred and Sixty the said Brigantine with the furniture and appurtenances then belonging to her was the Property of Thomas Moore Thomas James Thomas Parkinson and William Hope of Londonderry Merchants.

Secondly. That after the said First day of February the said Brigantine still being the property of the said Thomas Moore Thomas James Thomas Parkinson and

William Hope In her passage from Lisbon to London-derry was Taken by the subjects of the French King From and out of the Possession of Robert Warden a subject of his Majesty King George the third and that the said Brigantine after the Capture aforesaid continued several Months In the Possession of the Subjects of the French King To wit untill on or about the seventh Day of September Last when the said Brigantine was retaken From and out of the Possession of the subjects of the French king by the said James Wright And his crew in the said private Vessel of Warr the Flying Harlequin.

Thirdly. That after the said Brigantine was Taken as aforesaid From the said Robert Warden and during the Time she remained in the possession of the subjects of the French king she was supplied with the Following several Articles all which are now on Board of and do belong to and are necessary for the use of the said Brigantine (To wit) Two Cables, One Hawser, seventeen pails, one Main Stay and all the running Rigging. Six wood Axes, six Crows, one Amplitude Compass, one spare Topmast and a New Lower Deck. And also that the said several Articles are now of the value of Three Hundred & Twenty Four Pounds . . . and that the Vessel Including the above Articles and all her appurtenances is of the value of Eleven Hundred pounds & no More

(Mr. Jas Duane Proctor for the Libellant

Mr D. C. Mathews Proctor for the Claimant

On the same day the Court decreed that the vessel be restored to her original owners, on their paying £740.7.6 for and in lieu of salvage.¹)

¹ The excess over one-half of value of remaining original vessel, plus whole value of betterments, represents costs. This case shows the current value of shipping, and minimum costs, as well as any other found.

DENNIS MCGILlicUDDY ET AL VS BRIG^T. SEA
HORSE & LADING.

A British vessel which goes to a French port, even in distress, and there purchases cargo for her owner, is not lawful prize; but, her trade being illegal, she must pay costs of acquittal.

(Libel asserting the *Sea Horse* to be French and prize to the privateer *Mars* (Captain McGillicuddy). She was owned by Thomas Boylston of Boston and sailed therefrom to Monti Cristi shortly before the declaration of war between Spain and Great Britain in 1762. On her voyage thither the *Sea Horse* was captured by the French who rifled her cargo, took her stores, damaged her hull and rigging and detained the mate as hostage for a ransom of £250 sterling. On reaching Monti Cristi Captain Kirkwood of the *Sea Horse* found his consignee, Job Prince, in jail as a suspected Englishman, the Spaniards forbidden to deal with the English, and a consequent inability to get wood, water or stores, or procure repairs for the injuries wrought to his vessel by the French. Another of Boylston's vessels, the *Sally*, was also in port with a considerable amount of salt beef on board, which was rotting in the climate and for which the Spanish would permit no market. As the Monti Cristi forts occasionally shot at British ships, although war was not yet declared, The *Sally* and *Sea Horse* removed to the outer harbor beyond gun shot, and under the supervision of Prince, who after five days got out of jail and went aboard the *Sally*, traded with Spaniards who came out to them in disregard of their own officials. At this anchorage, however, wood, water, repairs and ships stores were unobtainable. To facilitate the *Sally's* loading, her spoiled beef was transhipped to the *Sea Horse*, the latter giving in return sugar hogsheads which, filled with sea water, had been the ballast of the *Sea Horse* on the outward voyage.

Hearing of the approach of French and Spanish frigates, and fearing open hostilities, the *Sea Horse*, being unfit to go to Boston, and trusting to the humanity of the French rather than the Spanish, went to Fort Dauphin, a French port not over twelve leagues distant, and there sold some at least of the rotten beef as food for slaves, purchased a cargo of French

sugar, etc., and procured supplies and repairs. She then set sail for Boston and was captured by the *Mars*.

Mr. William Smith Jun^r for libellant;

Messrs. William Livingston & John Morin Scott for claimant.)

October 8, 1762 From the proofs in this Cause it clearly appears that the Brigⁿ. Sea Horse & Lading are the property of English subjects, and as I am to be guided by these proofs I think it my duty to acquit her and her Lading.

But as she came from a french Port laden with french Produce, I am of Opinion that the Captain of the Privateer was right in taking her as french property, sending her to port, and lybellling of her; and ought not to be put to any Costs or Damages, as the Trade she was in is the Cause of all this Suit; for these Reasons I do acquit the said Brigantine & Lading and order the same to be restored to the Claim^t. upon his paying to the Libellant his full costs and the sentence fees.¹

ROBERT SYMES ET AL VS SLOOP MARGRETTA & SARAH & LADING

A Dutch vessel taking French produce as cargo from a port in a French colony is presumptively lawful prize, because all such trade is illegal by French law.

Bills of lading with destination blank are most suspicious papers.

Evidence herein held insufficient to rebut presumption of French property.

Testimony may be taken on appeal in prize causes.

¹ This tale of the sufferings of Captain Kirkwood and Mr. Prince is taken from the claim and answer. The documents of the *Sea Horse* are lost, but Judge Morris was very familiar with illegal trading, having a few months before been of counsel for Captain McGillicuddy in the snow *Johnson (ante)*, and his summary disposition of the case induces belief that Mr. Boylston's employees were doing exactly what was expected, with which most Americans sympathized.

(The sloop above named was proceeded against as prize to the privateer *Mars* (Captain Symes). The *Margretta* and *Sarah* was documented as Dutch at St. Eustatia, and as belonging to Jeremiah Penniston, a Bermudian born but described as a resident for eight years of a Dutch Colony. She had sailed for Cap François from St. Eustatia with an Englishman, one Banks, on board, as supercargo. He sold that lading at the Cape, bought French sugars with the proceeds, loaded the sloop therewith and had bills of lading issued with the port of destination in blank. The Master of the sloop was a German, and her crew of eighteen of many nationalities, with few Dutchmen and none specified in the evidence by name. She carried eight guns and twelve swivels, and had eleven passengers lately released from the Cap François jail who were working their passage to St. Eustatia whither (notwithstanding the Bills of Lading) all the evidence declared the sloop to be bound. Banks was left behind in Cap François, and a letter from him to Penniston in English was captured with the sloop, and strongly indicated that the whole venture (except private goods of the crew and officers) belonged to Penniston, for whose Dutch citizenship no direct evidence was produced.

Mr. William Smith Jr. for Libellant;

Mr. Whitehead Hicks for Claimant.)

Dec. 17, 1762. All trade with foreigners in the french plantations for their produce, being prohibited by severe penalties, and it being the practice of the Enemy to Conceal their property under the Names of the Subjects of Neutrall or friendly States and particularly the Dutch, It seems to be a Very Natural and Strong presumption that all Vessells and Goods coming out of the french ports do Belong to french Subjects. Therefore to warrant the Release of them when Lybelled as prize, the Evidence of the property in the Subjects of States not at war with us Ought to be Very fair and Consistant. The Lybellant in this Cause has the Advantage of that generall presumption, and upon

Examining the Documents and proofs I do not think there is Sufficient Evidence for the Claimant to Take it off. Among the Documents there are two Bills of Lading showing that the Cargoe was taken in at St. Eustatia. How that was Occasioned is not Accounted for and certainly that Suggestion is not True, the place of Destination is Left Blanck, which is unusual and it may be conjectured that it was with Design to have an Opportunity of filling them up at Sea as might best Suit the Safety of the Vessell and Cargoe. Be that as it will, they do not Agree with some of the Other Documents, which Ought all in good Faith to Speak the Same Language. As to the Witnesses they are Interested tho Loyall by the Statute, yet Suspicious, Fritz's Declaration that he Carried the money to St. Kitts to pay for the Vessell, seems Inconsistant with the Paper Proving the Transferr to be at St. Eustatia where the Vessell was with her pretended Owner; the Same Document Shows that Pennistons title was Gained the 27th Feby Last, and yet Bernard Swears that the Sloop belonged to him about two years ago, for so Long he says he has Known her and that Ever since he Knew her she was Pennistons. Such weak and Inconsistent proofs cannot be Sufficient to Oppose to the Generall presumption which is Strengthened by that Inconsistancy; And the other Circumstance of the Sloops being so Unusually Armed with Eight Cannon, 12 Swivell a Number of Small Arms and a Crew of Different nations More than Sufficient to navigate So Small a Vessell. Her Condition Seems to Indicate Fear, and a Design to Oppose a Visitation by Vessells of Inferiour force for which a Dutch Vessell could have no Reason in those Seas.

Upon the Whole therefore I think it proper to drive the Claimant to fuller proof if he can give it upon his Appeal; And hereby Acquitting the Small Adventure

of Six Hogsheads of Sugarr and nine Baggs of Coffe as the Captains, and one Hogshead and Six Barrells of Sugarr for the Mate, it being probable that they may have a Small Priviledge Allowed for their Services as foreigners; I do Adjudge and Condemn the Rest of the Cargoe with the Vessell her Boat Guns Arms Ammunition Tackle Apparrell and Furniture to the Lybell^t for the Use of himself, his Owners and Company; and that the Claimant pay the Double Costs of the Lybellant to be taxed.

JOHN GILLASPIE VS PATRICK HYNES

MOSES LINSTER VS. THE SAME

A passenger struck by the Master of a ship, for publicly objecting to short allowance of food, awarded £10 damages. The same awarded a passenger similarly struck, for asserting that said Master was unjustly punishing a boy.

(Libellants were passengers, and respondent master of the *Snow King Fisher* of Newry, Ireland, which left that port July 27, 1762, and arrived at New York October 14th, with at least ninety persons on board, or perhaps ninety passengers (the testimony is not clear on this point.) The price of passage was three guineas, food included, and Hynes had advertised his vessel as an emigrant ship promising a certain scale of victualling. Many of the passengers were "redemptioners," who had agreed that if within thirty-one days of arrival they did not pay for their passage, the master might sell them as servants to whomsoever would discharge the debt in return for the shortest period of service. Of this class a considerable number were girls, some owing for their passage to Captain Hynes, and the rest similarly owing one Braiden, a Philadelphia speculator in such matters. Gillaspie and Linster, however, had paid for their passage in advance. Before the voyage was three weeks old, there was evidently not enough food on board to maintain the advertised victualling scale, and especially was this true of bread. There was evidence that Hynes had stated in Ireland that he would sail with sixteen weeks provisions, whereas he had enough for but six weeks on full

allowance. Whatever was the exact truth in this regard, the passengers were put on short allowance in about three weeks after departure, and were (as they thought) also stinted in water. Some passengers were also punished for wasting water, by further limitation of supply. The Captain had a quantity of cheese which he sold to those who had money, but all who relied upon the ship's stores lived on salt-meat and water for a time not definitely stated before arrival; the bread was exhausted. The evidence does not, however, reveal any illness or acute suffering. The first mate was charged with the duty of serving out to the passengers this short allowance of food, and he became very unpopular with them for that reason. The master soon after leaving port was so ill that for some time he came on deck but once a day, to take the sun; and one day was unable to perform even that duty. The mate testified that Captain Hynes "had a cold which he got from taking physick;" but every passenger who gave evidence had heard of the Captain's "foul disorder" or venereal disease, and he was evidently regarded as very ill. He seems to have recovered before reaching New York.

Process in these cases was issued within a few days of the *King Fisher's* arrival. Gillaspie complained of two assaults upon him by Hynes on August 16th and 17th respectively, Linster of one on October 5th.

Hynes pleaded that there was a plot among the passengers (in which Gillaspie was a leader) to kill the mate if the Captain died, and give command to some person of their own choosing. That Gillaspie on August 16th came upon the quarter deck and abusively declared he would throw the chief mate overboard, upon being requested to keep quiet he refused, and thereupon Hynes struck him with the open hand. Any assault on August 17th was denied.

As to Linster respondent pleaded that he was implicated in the plot aforesaid, but on October 5th he was disciplined by Hynes for insisting upon going among Hynes' "servant weomen" in order to have criminal converse with them. It was admitted that in such enforcement of order and decency Hynes struck Linster with the open palm.

The evidence given by the mates, some seamen and numer-

ous passengers, showed that Hynes believed there was an attempted agreement to prevent the unpopular first mate ever commanding the vessel; this belief originated in the statement to Hynes or overheard by him, of one "Anderson a Wig Maker" but there was no proof that Gillaspie or Linster ever heard of such a plan, nor that the suggestion ever got further than statements that the mate *ought* to be thrown overboard. Hynes undoubtedly kept loaded firearms in his cabin after this report. The majority of the depositions agreed that the captain was not "cruel" but used the people "very differently," and there was evident jealousy among the servant women, because the Captain's own redemptioners received more generous allowance than the rest, though all these women were severely disciplined by being flogged with a cat-o-nine-tails on the bare back, if they were thought to misbehave.

Gillaspie before August 16th had refused to assist in pumping ship and had incited other passengers to like rebellion. It is not clear whether he argued that such labor was not according to the contract of carriage, or unjust in view of the short allowance, or put his action on both grounds. On August 16th he did have some talk about the food with the Captain on the upper deck, and some witnesses heard the lie passed, but who uttered the provocative term is not proven. Hynes struck Gillaspie on the lip with his fist, and made it bleed, but did him no other physical injury. Libellant was at the time sitting down, and made no resistance. Thereafter Gillaspie frequently said he would sue Hynes as soon as he got to New York. Of any assault on August 17th there was no proof at all.

Linster by all the evidence volunteered a statement in favor of one Barney Mullen, a boy whom the captain was beating with a rattan for going into the forecastle among the women, stating that Mullen was in another part of the ship at the time alleged. Thereupon Hynes declared "that was as much as to call him a liar," and struck Linster with the rattan and his fist, blacking libellant's eye, but inflicting no other damage.

Messrs. Samuel Jones & William Smith Jun^r. for libellant;
Messrs. Thomas Smith & William Livingston for respondent.)

Oct. 21, 1762 On motion of Mr. Jones the marshal returns *cepi corpus*. On like motion Libel read & filed, and on motion of same proctor that the Marshal bring in the Body *sedente Curia*, Mr. Sam^l. Vanhorne stipulated in form in the sum of £200 on Condition to pay all such Costs & Damages as the Court may Adjudge.

Jan 6, 1763 Mr. Jones moved for a Decree Whereupon The Judge having fully Considered the proofs delivered his decree as follows to wit: that the def^t. is guilty of the Assault & Battery complained of by the Libell^t. & that he had not supported his justification pleaded by Testimony; but that he will be in some measure punished by the Costs of suit; did therefore adjudge & order that he pay to the Libell^t. ten pounds Damages and the Costs of Suit to be taxed, and that thereupon all stipulations taken in the Cause be discharged¹

(A like decree was entered in each case.)

¹ These decrees were promptly paid, although an appeal was formally lodged to the High Court of Admiralty or such other Superior Court as might be entitled to hear the Appeal. This curious language shows how unfamiliar and uncertain was the bar in respect of appeals on the instance side. *Brown vs. The New York (post)* is the only such appeal found in Marsden, and the only one in which the vice admiralty records give any evidence of preparation of apostles.

The depositions in this case are complete, and suggest wonder, not at what complaint was based on, but what was not thought worthy of suit. Gillaspie is described as of rather higher station than most of the passengers; he evidently complained boldly and stood upon his rights, as he understood them, but action for breach of contract evidently never occurred to him or his counsel. No witness manifested any horror or surprise at the flogging of the women.

The *King Fisher's* advertisement, giving the victualling scale, was handed to the Register by one of the witnesses, as the deposition states. Unfortunately it has been lost.

DAVID SEYMOUR VS LOVIT THURSTON

Stipulations cannot be exacted from a party in actual custody.

July 11, 1763 Mr. Thomas Smith the Libellants proctor moved that the Deft should Stipulate to the Libell^t. instantan^r. Whereupon the Court was of opinion that as the Deft was Returned in Custody he could not now be compelled to stipulate to the Libell^t.

FRANCIS JOHNSON ET AL VS SHIP ANN

Admiralty process in enforcement of a lien for seamen's wages authorizes seizure of the *res*, although the same be in the custody of a common law court.

(The ship above named cleared from Liverpool for New York and thence to such other place as the master should decide upon. She arrived in New York on Oct. 3, 1763, about ten months after leaving Liverpool, having been obliged by stress of weather to put into Crookhaven and there extensively refit.

Shortly after arrival the master was arrested, and the ship attached by process issued out of the Supreme Court of the Province. Under this attachment the *Ann* was advertised for "Sale at Publick Outcry for the Benefit of the Creditors of the Owner or Owners of the said Ship," such sale to be held at the Merchants' Coffee House on Nov. 29th.

Thereupon the crew issued admiralty process and on)

Nov. 28, 1763 Marshal ret^d the Ship &c in Custody.

Libel read & filed & first proclamation made & default entered.

Mr. Scott moved for Leave to claim & answer or Demur for Mess. Fell Younge & Persal Trustees for all the Creditors of James Parkinson an absconding Debtor.

(A demurrer on behalf of creditors was thereafter filed and argument had by

Messrs Benjamin Kissam & John William Smith for libellants;

Mr. John Morin Scott for the creditors.

Dec. 28 The Court gave decree to libellants, but the grounds of demurrer and words of opinion have not been preserved.)

Jany 12, 1764 The Marshal bro't into Court the monies arising from the sale of the s^d ship amounting to £680, whereupon the Judge did order & direct the s^d Marshal to pay unto John Wm. Smith liblnt's proctor the sum of £511.16.½ for the wages decreed to be due to the Libellants and the sum of £67.2.1 for Costs taxed to be due to the Libellts., and that he should pay the residue amounting to £101.1.10½ to John Morin Scott Esqr the Claimant's proctor for the Benefit of the Claimants, which was paid to the (*sic*) John Morin Scott Esqr accordingly.¹

JOHN BROWN QUI TAM &C VS SHIP NEW YORK

A vessel destined for the North American colonies, carrying goods the importation of which was illegal, *held* not subject to condemnation, if before arrival her destination was changed, and she instructed, while still on the high seas, to come into harbor only for further orders.

The same ruling as to the illegal goods.

A judge's testimony taken in a cause heard by himself.

(The libel alleged in common form that Captain Brown of H.M.S. *Hawk* demanded condemnation of the *New York* and part of her lading, viz: 30 casks of wine and 20 boxes of soap, because she had brought into the Province said wine and soap (products of Europe) otherwise than from England, Wales or Berwick-on-Tweed. The action was the usual informer's suit, commonly promoted in the name of the Collector; but by an Order in Council dated June 1, 1763,² based on the recent Act of Parliament for the prevention of smuggling, naval

¹ The libel in this case shows that the First Mate and Carpenter received £4 sterling per month; the Second Mate £3.10; the Boat-swain and four seamen £3, and six other seamen and (*semble*) boys (including one cook) from £1.5 to 15 shillings.

² *Acts of the Privy Council, Colonial*, IV, § 509.

officers procuring condemnations for breaches of navigation laws became entitled to a moiety of the *res* condemned.

The answer of David Kenyon of Liverpool and Walter and Samuel Franklin of New York asserted themselves to own the ship, wine and soap, admitted the European origin of the lading, denied any importation or bringing into the Province of the same, and averred that ship and lading had been seized by Captain Brown on the high seas. It was admitted that the vessel was registered in New York.

The evidence showed beyond doubt, that the *New York* had sailed from her home port to Port au Prince with cargo furnished by Thomas White of Wall Street, for whose account a full return cargo of rum and molasses had been there bought and loaded. The original purpose of White was to bring the ship back to New York. The wine and soap, of small bulk and value, had been procured by the master for his owners.

About the time of leaving Port au Prince, White concluded that he could not afford to pay the Colonial duties on his French rum and molasses, and therefore arranged with the Franklins to charter the vessel from New York to the Isle of Man, that he might seek a market there. This change of purpose he mentioned to several witnesses, including Judge Richard Morris, who stated (in a manner below shown) that he had heard White say that it would be unprofitable to pay duties on his cargo, that the authorities and the man of war on the station were very active and that he therefore intended to send the *New York* on to the Isle of Man.

Several identical letters were then given the pilots, with instructions to deliver them to the ship's captain as soon as he was sighted approaching Sandy Hook. Two such letters were delivered when the *New York* was still several leagues outside the Hook, and in both instances the pilot on making delivery inquired whether the captain had any goods he wanted to send in by them, for there was a man-of-war inside which would take possession of the ship if there was a possibility of holding her. Nothing however was "run in," and claimants' depositions asserted that the master replied that he was not afraid of men of war and had nothing to conceal, or words to that effect.

The tenor of the letters by the pilots (none of which however was produced) was to make for Prince's Bay (also called Amboy Roads), and report to Cortlandt Skinner of Perth Amboy, through whom definite orders would come,—meanwhile nothing was to be unloaded. The *New York* did turn toward Amboy after passing the Hook, but by uncontradicted evidence found both wind and tide against her when less than two miles inside, and therefore anchored. The *Hawk* then at once sent a boat's crew aboard and seized the vessel. As neither the *New York's* captain nor the naval officer who made seizure testified or were competent witnesses, what occurred on boarding the ship was shown by a mate and midshipman of the *Hawk*, and the second mate of the *New York*, who released their interests to qualify. The midshipman said that he had heard from the *New York's* second mate that the vessel was going to Amboy to discharge cargo, this the second mate denied, asserting in substance that all that he or anyone else on board knew, was that although they had expected to return to New York, the master got letters outside the Hook directing him to Amboy Roads for orders. The other witness from the *Hawk* swore that he had heard the Captain of the *New York* say he was bound to Amboy to deliver cargo.

On seizure the *New York* was promptly brought up to the East River; her captain then took a manifest to the Custom House and gave notice that he was bound to the Isle of Man, and the Franklins, in the presence of Mr. James Emott, a Notary Public, demanded their ship from the Naval Lieutenant in charge, and made a notarial protest on refusal. The naval authorities offered White an opportunity to unlade his rum and molasses, which he refused, insisting on his charter party, and announcing his intention of holding Captain Brown for damages. The Colonial duties on French rum and molasses had not changed during the absence of the *New York* from her home port. The libel was filed Dec. 19, 1763; on)

April 2, 1764 Mr. Scott proctor for the Claimants suggested to the Court that he is informed and has reason to believe that his Worship the Judge knows certain matters, which if declared, he conceives would

be for the Benefit of the Claimants in this Cause. And that as there is no person having power to swear and examine his Worship the said proctor therefore prayed an order of this court that he have Leave to bring in Interrogatories, for his Worship to declare his answers thereto in writing, and file the same with the Register, that the same Interrogatories & his Worship's answers thereto may be read on the hearing.

Whereupon his Worship declared that he was in doubt about the Legality of that method of declaring his Testimony, but that he will declare & file answers to such Interrogatories as shall be bro^t. to him for that purpose, saving to Informant his right of Exception to the Same.

(Thereafter the interrogatories were filed, with the statement of Judge Morris (substantially given above) endorsed thereupon. The cause was argued by

Mr. Jno Tabor Kempe Advocate General & Mr. Whitehead Hicks for Libellant;

Mr. John Morin Scott for claimants.)

May 30 1764 The Judge delivered his Decree in the words following, towit: I have considered the proofs & several Statutes relative to this Cause, and do not think the ship and 30 hog^s. wine & y^e 20 Boxes of Soap in the Information mentioned are forfeited, and Therefore do Acquit the said Ship with all her Boat Guns Tackle apparel furniture & appurtenances and also the 30 casks of Wine & 20 Boxes of Soap in the Information mentioned; & I do order & decree that the Informant pay to the Claimants their Costs to be taxed.¹

¹ This case, reported Marsden, p. 30, is almost certainly the only appeal from the New York Vice Admiralty, and not to the Prize Commissioners, ever perfected and argued. Mr. Marsden has found no other instance, and the minute books of the trial court, or the filed papers, or both, always show the giving of stipulations on appeal, the preparation of apostles, the receipt of information of

JAMES HAWKER QUI TAM &C VS. SLOOP HUMMING
BIRD & LADING

Under the statutes forfeiting a vessel for carrying British grown sugar without bond, all goods found on board a vessel neglecting to give bond before sailing are likewise forfeit.

(The sloop above named was seized by H.M.S. *Sardine* (Captain Hawker) off Sandy Hook, while bound to New Bern, N. C., and libelled because having British sugar and molasses on board she had sailed without giving the bond required by law. Her cargo consisted of many articles other than sugar, placed on board by divers persons for delivery to consignees at New Bern, in which goods the sloop and her owners and master had no interest other than freight charges.

No claim was interposed for sloop, sugar or molasses, which were condemned on default. The shippers of the other goods, respectively claimed their own.

Mr. John Tabor Kempe Advocate-General for libellant;
Mr. William Smith Jun^r for Claimant.)

May 1, 1764. I have fully considered the proofs Argument & Book Cases produced by the parties in this Cause, and am of opinion that by the statute of

affirmance or reversal, and proceedings against stipulators for costs or damages, or some of these matters. In no other case on the instance side can the completion of an appeal be demonstrated.

This gives to Marsden's lengthy report, taken from the court-room notes of Sir William Burrell, a distinguished advocate, peculiar interest.

Judge Morris's doubt as to his own testimony was justified in a very technical way, for it was thrown out as not being sworn to; although Mr. Scott's statement that no one could swear the Judge was clearly right.

Sir Thomas Salusberry reversed decree as to the wine and soap, but affirmed as to the ship, apparently solely because Mr. Kempe had made but a "lame case" in failing to procure and put in evidence any paper writings showing the ship's destination and purpose. This ruling displeased Sir William, who noted that the wine and soap justified the seizure.

As a matter of history the whole report shows a complete igno-

the 22^d & 23^d Car 2^{di} all the Goods found on board of the Humming Bird at the Time the Seizure are lyable to confiscation as well as the enumerated commodities: and I am further of opinion that in my adjudications under any of the statutes, I am to be governed by the words of those statutes. And therefore I do adjudge & condemn the Lading of the Humming Bird, mentioned in the Information (& not before condemned) as forfeited to his Majesty and such persons as are entitled to the same pursuant to the statutes in such cases provided. And I do adjudge & Decree that the Claimants shall pay the Informant his Costs to be taxed.

CHARLES WARD APTHORPE ET AL VS SNOW PRINCE
OF WALES &C

A vessel touching at New York with cargo, but bound to another and foreign port, may bring into the harbor, as cargo for said foreign port, goods which could not legally be imported on that vessel into New York.

(The Snow above named sailed from Belfast laden with cargo for New York, and also for St. Eustatia. The portion destined for the latter port consisted of European goods. The vessel arrived in New York and notified the Custom House of the differing destinations of the two parts of the cargo. There was delay in doing this owing to the fact that two successive

rance of American conditions by court and counsel, and great discontent with the procedure because it was unlike that then pursued in the High Court of Admiralty. When the appeal was heard (1767) the New York Vice Admiralty had had its own bar for half a century and developed its own practice, a far simpler and less cumbersome procedure than that then prevailing in England.

The ignorance of New York business methods is quite as apparent. Counsel were very indignant at the thought of going to the Isle of Man, "that nest of smugglers," but the patent fact that, had not the Order in Council made it worth while to put a vigilant sloop of war on guard near the Hook, the Franklins and White would somehow

days were holidays on which the Custom House did not open, but counsel finally agreed in writing that (in substance) the notification was given with reasonable speed. The Collector (Apthorpe) however pressed this libel on the ground that the European goods not having been shipped from England, Wales or Berwick-on-Tweed, could not lawfully be brought into New York from Ireland, even upon a ship en route to the Dutch Island of St. Eustatia.

Mr. John Tabor Kempe Advocate-General and Mr. William Smith Jun^r. for libellants;

Messrs. Benjamin Kissam & John Morin Scott for claimants.)

Nov. 2, 1764 I have Read the Arguments in this Cause and with Great Attention considered the Statute upon which the information is Brought and Cannot think upon Comparing the 8th and 6th Clauses of that Statute with each other that the meer comeing into port with prohibited Goods is Such an Importation as would under that Statute work a forfeiture,—And that in this particular Case there can be no forfeiture because it appears a Report was made and an Inventory Delivered before unladeing any part of the Cargo agreeable to the 8th Clause of the said Statute the want of which Report and Inventory is made the sole Cause of forfeiture by the said Clause, And I am confirmed in this Opinion from a consideration of an Act

have gotten rum, molasses, wine and soap into either New York or New Jersey at low rates, and originally intended so to do, is not even alluded to.

Mr. Cortlandt Skinner of Amboy was Advocate-General of New Jersey.

Mr. Thomas White sued Captain Brown at common law, for the detention of the rum and molasses, and arrested him, as appears by a memorandum of White's and a subpoena for all the Admiralty papers found on file. Whether White recovered or not, the whole episode is illustrative of the difficulties of enforcing revenue and navigation laws in the New York of 1763.

of parliament made in the Last year of his present Majesties Reign which as well from a Recital of the particular Mischiefs that had arisen from Landing Clandestinely in America European Goods under Cover of small parcells of goods Shipped in England, as from the Remedy which that Act provides, Shews that previous to the passing that Act a mere Comeing into port with prohibited goods was not Considered by the Legislature as an Importation that would create any Forfeiture. Therefore I do acquit the said Snow Prince of Wales together with all her Boats Guns Tackle apparel Furniture and appurtenances and also the one Box of Shoes forty Firkins of Tallow and one hundred Boxes of Candles in the Information mentioned, and I do order and Decree that the Informant pay to the Claimants their Costs to be taxed.

JOSEPH SCULL ET AL VS SHIP PROSPERITY & LADING

No salvage is due upon royal property recaptured from the enemy.

(On Sept. 21, 1762 the privateers *Rodney* (Captain Scull), *Emperor of Morocco* and *Hero*, captured the ship above named, which had been British; and while on a voyage from Antigua to Great Britain, was captured by the Spanish, taken to Laguayra, condemned as prize, kept in port about six weeks, additionally laden with some cocoa and hides and then sent toward Curaçao, on which voyage the present libellants took her.

Libel having been filed, and ship and cargo sold, the original owners appeared and offered salvage, and the Crown also claimed certain sugar of the original cargo as royal property.

Mr. William Smith Jun^r for libellants;

Mr. William Livingston for claimant.

The Advocate-General, Mr. Kempe for the Crown. The cause was delayed for no discoverable reason until March 26, 1765. The Judge delivered his sentence as follows:)

I have fully considered the Depositions and proofs in this Cause as also the Account of Sales made in Consequence of an order of this Court for the sale of the Ship and her Cargo from which the following Facts Appear.

1st. That the Ship and her Loading were originally English property Except that Part of her Loading consisting of Cocoa and Hydes

2^{dly}. That she was Taken by the Enemy and Carried to Lagaira where the Cocoa and Hydes were Laden on Board of her.

3^d. That she was in the Possession of the Enemy upwards of Ninety Six Hours.

4^{thly}. That our Sovereign Lord the King had at the time of the Capture by the Enemy seven Hogsheads and three Teirces of Sugar on Board.

5th. That the Produce of the sales of the said Ship and Cargo Including the Crown's Interest and the said Cocoa and Hydes amount to £12071:10: 7

That the amount of the seven Hogsheads and three Teirces of Sugar on Board belonging to the King upon an Average is

238: 5:10

That the amount of the Cocoa and Hydes is

707: 4: 9

Whereupon I do adjudge and Decree as follows.

First that the Agents bring into Court the sum of £238:5:10 being the whole amount of the Kings Sugars which I do Adjudge and Decree to our Sovereign Lord the King without any salvage Deduction or Abatement whatsoever.

2^{dly}. The sum of £707:4:9 being the Amount of the Cocoa and Hyde I do Adjudge and Condemn as Lawful Prize for the use of the Captors according to the Prayer of their Lybell.

3^d One Moyety or half Part of the Residue of the

amount being £5523 I do Adjudge and Decree to be Paid to the Lybellants for and in Lieu of Salvage they paying thereout or bearing the burden of the necessary Fees of Condemnation and a Moiety of all usual and Customary Charges for the Sale of the said Ship and Lading (except the Kings Interest and the said Cocoa and Hydes).

4th. The other Moiety or half Part of the Amount of £5523 I do adjudge and Decree to be paid to the Claimants for the use of the Original Owners Subject Nevertheless to the payment of a Moiety of all Usual and Necessary Charges for the sale of the Said Ship & Ladeing (Except the Kings Interest and the said Cocoa and Hydes) and also Subject to the Payment of the Sentence Fee, & of the Lybellants Costs to be Taxed, which I hereby decree to the Lybellant; and upon the Respective Parties Complying with this Decree I direct the Stipulations to be discharged.

ROBERT SINCLAIR ET AL VS GOODS SAVED FROM
THE BRIGANTINE NANCY

Upon goods salved from a sinking ship, by taking them in small boats to another vessel in mid-ocean, an award of 50 per cent is proper. The Court declines to apportion an award among numerous salvors, doubting the right so to do.

(Libellants were the master and crew of the *Snow Amelia*, which, eastward bound from London to New York, fell in with the *Nancy* in Lat. 37 N. Long. 62 W. shortly before 9 A.M. of April 7, 1768. There was another vessel near by bound east to Bristol. The *Nancy* had a valuable cargo of dry goods, and had been pumping night and day for so long that her crew was exhausted, and wished to abandon ship. The crew of the *Amelia* with the assistance of two seamen who were passengers upon her, worked until seven in the evening getting as much as possible of the *Nancy's* cargo aboard in small boats. Toward the end of their labors the water was five feet deep

in the *Nancy's* hold, and the weather which was good during the day becoming threatening. The *Nancy* was then abandoned, three of her crew coming to New York on the *Amelia*, and the rest going aboard the Bristol vessel, which had taken no part in the salvage.

The seamen passengers filed claims, setting up their services.

Mr. Benjamin Kissam and James Duane for libellants;

Mr. John Morin Scott for James Wiltshire, a passenger;

Mr. Samuel Jones for William Bull, a passenger.)

Jan. 30, 1769. The Judge delivered his sentence & Decree in the words following towit:

I have fully considered the Proofs in this Cause and am clear in my Opinion that the Libellants are Entitled to a Salvage, but am sorry that from Cases of the like kind, which frequently happen, there is no general Rule laid down to direct a Judge in Ascertaining the Quantum of such Salvage, it is for this reason that I have delayed giving an Opinion in this Cause so long, hoping that I might find some Rule that would direct me, but have discovered nothing, except the act of Parliament made in the 29th Year of his late Majesty's Reign Entituled an Act for the Encouragement of Seamen and the more speedy and effectually Manning his Majesty's Navy commonly called the Prize Act, in which the Salvage to be paid for the Retaking of Vessels from the Enemy is Ascertained and the most that is there Allowed is a Moiety, and that is when the Vessel has been above Ninety six hours in the Enemy's Possession or fitted out as a Ship of War, in both which Cases the property of the Original Owner is supposed so far to be lost that there Remains only a possibility of it's being ever recovered

From the Depositions in this Cause the following facts are proved

That the Brigantine *Nancy* was very Leaky, had three feet Water in her Hold when she fell in with the

Amelia, that the People were much fatigued and only kept the Pumps going untill they should have an opportunity to Escape from the Brigantine, which the Weather would not permit them to do when they first saw the Ship for Bristol or the Amelia; that when the Boats went Aboard the Nancy the Swell ran so very High that they were in danger either in coming to the Snow or Brigg; that great Industry and Labour was Used in getting the Goods out of the Brigantine and Carrying them to the Snow, that the Water increased so much that the last Goods that were taken out of the Brigantine were taken out of the Water, and that in all probability the Brigantine foundered soon after the Snow left her; from those facts I think it is abundantly Clear that those Goods would have been infallably Lost unless for the interposition of the Libellant and his Crew, and that what was Saved they saved with great Labour and Risque to themselves. I do therefore Decree to the Libellants for Salvage of the said Goods one moiety or half part of the Value of the Goods so Saved, one half part thereof to the Owner or Owners of the said Snow Amelia, the other half part thereof to the said Robert Sinclair and the Mariners People and passengers on Board, who were Instrumental in saving the said Goods; but do Decree and Order that all Storeage, Commissions and other Expences whatsoever (except the Costs of this Suit) attending the Drying, Landing and Sale of the said Goods be paid out of the said Moiety so Decreed to the said Libellants, and I order and Decree the costs of this Suit to be paid one half by the Lybellants and the other half out of the Moiety of the Originall Owners.

I should with pleasure have fixed the Shares of each man in this Salvage according to the request of Mr. Duane entered on the Minutes of this Court, but in the first place I something doubt whether it is within my

Province; and should have been Glad Mr. Duane would have shewn me a President for my Conduct in this Case, but had that difficulty not laid in my way, I have no proofs before me as to the Numbers of Men on board at the time, nor of their respective merits in the service.¹

JOHN WENTWORTH QUI TAM VS. WILLIAM DEAN

SAME VS. WILLIAM DEAN JUN^R

SAME VS. WILLARD DEAN

OUR LORD THE KING VS THREE WHITE PINE TREES

In an action for a penalty the respondent must be held to bail, and can neither be discharged upon a common appearance, nor admitted to file a sworn answer.

Cutting down pine trees of the statutory size renders the offender liable to the statutory penalty, whether or not said trees are fit and suitable to use as masts for the Royal Navy.

(Libellant, a resident of New Hampshire, and nephew to Benning Wentworth, the then Governor of that Province, was "Surveyor of his Majesty's Woods in all America" and as such brought the above described suits in April 1769; as well as many others; all (except the proceeding *in rem*) against inhabitants of Brattleboro, Guilford, and Windsor, towns of Vermont bordering on the Connecticut River. Only in the above actions was service of process effected. All the respondents were described as dwelling in the County of Cumberland in the Province of New York, and as having within that county cut down white pine trees of the diameter of more than 24 inches at a point three feet from the ground, fit for masts for the Royal Navy against the form of the Statute, thereby subjecting themselves to a penalty of £50 sterling for each tree so cut.

¹ The salvaged goods sold for £1412.11.9½. Libellants' costs were £31.14. The salvors' share was, therefore, £690.8.10½. Mr. Robert Murray, one of the owners of the *Amelia*, divided this sum (less a commission to himself of 5 per cent, one-half to the Master and crew, and one-half to the owners. No record remains to show what the passengers received, or in what proportion the crew shared.

The libel *in rem* was against three trees of the proper size found cut. In that case a decree passed by default.

The Deans (a father and two sons) answered as in the opinion set forth, and further that they had cut only on their own land, which they held under grant from the Governor of New Hampshire. The proofs plainly showed all that is stated by the court, and in addition that most, if not all, the trees felled were taken from the land of Dudley Chase, and in fulfillment of a contract to cut and raft 500,000 feet of lumber at one dollar a thousand.)

Oct. 6, 1769 Mr Duane proctor for the defendant did offer to the Court that the Deft was ready to swear to the said answer. But Mr Advocate General of Council for the Informant Objected to the Defts being admitted to Swear to the said answer, and prayed time to argue the matter. Mr Duane for the Defendant moved that the Defendant might be discharged out of Custody on a Common appearance.

The Court determined that defendant ought to be held to bail, and therefore cannot be discharged on a common appearance.

Oct. 18. His Worship the Judge ordered and determined that the Defendant be not admitted to swear to his answer.

(Subsequently after argument by

The Advocate-General (Mr. Kempe) for libellant,

Mr James Duane for respondents,

the court filed opinion as follows in Wentworth vs. Dean Sr.)

Dec. 1, 1769 The Information in this Cause charges the Defendant with Cutting Felling and Destroying & being Aiding and Assisting in Cutting Felling & Destroying seventeen White Pine Trees Each of the Diameter of Twenty four Inches or Upwards at Twelve Inches from the Ground and of the same Diameter & upon and at three feet from the Ground,

for which the Informant Pursuant to the Statutes Prays the Defendant may Forfeit for each the sum of Fifty Pounds Sterling—one half for the Informant.

To this the Defendant Answers first by complaining of the Hardship of the Prosecution in the Admiralty and his being held to bail, and secondly by alledging that he was Possessed of a Tract of Land called the Lower Meadow in Windsor, and that in Order to clear the Land to Raise his Bread, he had applied to the Informant and his Deputies; and particularly to one Benjamin Whiting to survey the Timber upon this Meadow to designate what was fit for the Kings Use: from Whiting he Pretends a Permission That all his Endeavours Proving Fruitless and he having for a long time kept Six Oxen two Horses and four men unemployed, between the times in the Lybell mentioned he cut the Timber Growing on that Meadow, but Insists that it was all unfit for masting the Navy. He further urges the Opinion of one Moses Burnham formerly a Deputy Surveyor Concerning the Timber on this Meadow, and Concludes that he is therefore not Guilty as in the Information is charged. To this follows a general Replication, and Rejoinder which Puts the Cause at Issue.

It being Admitted that the Defendant has Cut Felled & Caused to be Cut & Felled some Pine trees on the Lower Meadow in Windsor aforesaid between the times in the Information mentioned, the Facts further necessary to be Attended to are.

First The Number of those Trees, and Secondly,—The Diameter or size of them

First The Number is fixed by Elijah Granger in his Answers to the third Interrogatory in which he says, “The said William Deane did Cause to be Cut and felled Sixteen of the Seventeen White Pine Trees in the Information mentioned,” And tho’ the other two

Witnesses do not so Pointedly fix the Number to Sixteen Trees Yet they Coroborate the Testimony of this Witness through their whole Answers to the third Interrogatory; and Granger who was Employed by the Defendant and was Personally Assisting in the Cutting those Trees Could not well be mistaken as to the Number.

Secondly. The Diameter is Also fixed by Granger in his Answers to the third Interrogatory, where he says that he believes that none of the said Trees were Cut Nearer than Twelve Inches to the Ground if so near and none of them so high as three feet from the Ground. That he the Deponent was Present when the Diameter of the stumps or Blocks of the said Trees remaining on the Ground were Measured and also the length of three of them. That two of the said Stumps were forty two Inches in Diameter One forty Inches and None under Twenty four Inches Diameter,—And the same in substance is Proved by Benjamin Wait in his Answers to the same Interrogatory, and thus without going further into the Proofs it Appears that between the times in the Information mentioned the Defend did Cut, Fell & Destroy (& was Aiding and Assisting therein, or in drawing away the same) Sixteen White Pine Trees which were at least Twenty four Inches Diameter at Twelve Inches from the Ground and therefore he is Undoubtedly liable for the Penalties Inflicted by the Statutes,

I have fully Considered the Defendants Answer and if the contents of it were true and supported by the Witnesses, I am of Opinion it would not be sufficient to acquit the Defendant; but Instead of it's being Proved the Witnesses do prove the Reverse, I shall therefore not waste time in going through the Whole of it but content myself with this one fact.—The Answer sets forth that the Defendant Purchased the lower Meadow

in Windsor, that the Trees were Cut in Order to Clear & Improve the Meadow that he might be Enabled to raise Bread for the Support of himself and family, and Not from the Expectation of any Benefit or Advantage which could arise from the Sale of the Timber: from the Testimony of Granger and Wait it Appears that great Part of this Timber was cut upon Lands that did not belong to the Defendant and to Fulfill a Contract the Defendant had made to Deliver a Quantity of Logs the Pay for which was to be at least Two Hundred Pounds. Granger who was one of the Contractors with the Defendant Cannot be Mistaken, and there is no Room left to Doubt that the Defend^t.—did Cut those Trees for the sake of the Money he was to get for them, and not for the Purpose of Clearing the Land to Raise Bread for the Support of himself and Family as he suggests in his Answer, and I am surprized the Defendant could offer to Swear to this Answer.

Great Stress in the Answer seems to be laid Upon those Trees not being fit for Masting the Royal Navy. If this was true it does not appear to me to have any Force considering the Spirit of the Statutes for the Preservation of this Timber and certainly it is not within the letter of them. The Penaltys being inflicted for the Cutting of Trees of Certain Diameters without Shewing or Designating for what Use or purpose they should be fit, I have therefore not Attended to the Proofs as to the Number that were fit for Masts for the Navy but have Contented myself with the Proofs of the Diameter of each Tree and Upon the Whole do Decree that the Defendant William Deane has Forfeited for Cutting the said Sixteen White Pine Trees the sum of Fifty pounds Sterling for Each makeing together the sum of Eight Hundred Pounds Sterling Money of Great Britain of the Value of fourteen Hundred

pounds Current Money of New York pursuant to the statutes in that case made and provided.

(Like decrees were entered against the sons for aiding and abetting their father.

The three respondents being in court on the rendition of these decrees thereupon "severally waived the privilege of twenty days allowed them by the Statute to provide money to pay and discharge the said Forfeitures, severally declaring that they were unable to pay, & therefore could not and would not pay the same or any part thereof." Executions issued forthwith, which were returned *Nulla Bona* as to the sons. The return as against Dean Sr. was as follows.)

Windsor in the County of Cumberland & Province of New York December 29th 1769 Pursuant to the within written Execution I have made diligent Search for the goods and Chattels of William Dean but Could find none, but was Informed by the wife of William Dean Jun^r. who Resided at the house of said William Dean that he had convey'd them, before this Execution was Issued to Samuel Wells Esq^r. one of the Justices of the Inferiour Court for said County: Whose attorney, one John Grout, had taken into his possession and had Secured them that they Could not be found, and of this I was also Informed by several other persons.— And I also saw an Inventory of said goods & Chattels, amounting according to my Judgment to One hundred and Twenty pounds Lawful money of New York. And therefore I Return this Execution in no part Satisfied.

Benjⁿ. Whiting D.marshal

(Upon this the Court rendered a further decree in the case of Dean Sr. as follows.)

Jan. 25, 1770. It appears to me that no Sufficient distress can be found wherewith to pay the Penalty & forfeiture Adjudged to have been incurred by the def^t in this Cause; Therefore I do Adjudge this Defendant to

be committed to Prison there to remain without Bail or Main prize during the term of four Months or until the said defendant shall pay the Penalty, and find sufficient security for his Good Behaviour for the space of three years, to be Accounted from the first day of December last past, being the Day of his Conviction

(In the cases of the Sons a similar decree was given, except that they were to serve but three months.

At the expiration of the terms specified they gave their own recognizances for good behavior before Horsmanden C. J. and the causes ended there.¹)

ELIAS BURGER VS. SUNDRY ARTICLES FROM A
BRIGANTINE ASHORE ON ROCKAWAY BAR

Upon tackle and apparel saved with great labor from a wreck, a salvage of 50 per cent on net value awarded.

(On Jan. 4, 1770 libellant in his Pettiauger *Mary*, with one John Quin for crew, was bound from Staten Island to Quogue; when he saw a Brigantine stranded on Rockaway Bar. Thinking that a man was signaling for assistance he boarded the wreck and found it abandoned. Thereupon he stopped a day, working in removing the running rigging and tackle, then went on to Quogue, and on his return worked several days until he succeeded, with Quin's assistance and that of some people on Long Island whom he hired, in getting off nearly everything above decks, and transporting them to Beekman's Slip, where they were stored. The weather was very cold and work was sometimes interrupted by storms. This libel was filed by Burger as Master of the *Mary* on his own behalf and that of the owner. Quin testified, but evidently

¹ This case is singular in that it is the only instance found of the use of the Admiralty Court as a sort of Exchequer for the collection of penalties, authorized by some then recent statutes. Mr. Duane's answer bitterly complained of the practice, but he did not dare risk a demurrer.

regarded himself as working for wages, and made no claim for salvage.

Mr. John Morin Scott for libellant.)

August 10, 1770. The Judge delivered his sentence & Decree in the words following to wit:

I have duly examined and Considered the proofs & Circumstances in this Cause and it appears to me clearly that the Libellant saved the several articles mentioned in this Libell with very great Risque and fatigue, and that if it had not been for his Interposition tis more than probable that most part if not all of what was saved from the wreck of the said Brigantine would have entirely perished.

It appears to me by the account of the provost marshall of the Sales of the Said Goods saved (which account is filed in this Court) that the Gross amount of the said sales is £63.8.6; out of which I order and Decree that there be paid to the Libellants proctor and Advocate for services in this Cause the sum of Twelve pounds To the Register of this Court the sum of £7: 2: 2^d for his fees & services in this Cause and to the provost Marshall for his commissions on the sale of the s^d. Goods and collecting the amount of the sales & filing the accounts thereof & after the Rate of five per Cent on the s^d Sales the Sum of £3: 3: 5 & for his Notice fees 5/ And to the Libell^t. for Storage & Cart hire 11/ amounting in the whole to £23: 1: 7^d. And I further order And Decree that one Moiety of the neat amount of the Sales of the said Goods saved amounting to £20: 3: 5.1¹/₂ be paid to the owner or owners of the said Brigantine and the other moiety or half part thereof to the Libellant for the use of himself & the owner of the said Pettiauger called the Mary as a Recompense for the risque & Trouble of saving the said Goods.

PETER BENSON ET AL. VS. SLOOP POLLY

A definite agreement to work on board ship for passage is not converted into any agreement for wages by subsequent statements of the captain that he would "make an acknowledgment" to such passage workers.

There is no consideration for such promise.

A promise by a master to pay such passage workers made after completion of voyage creates no lien on the vessel. Whether one agreeing to work his passage is bound to help unload ship, *Quaere*.

(Libel for seamen's wages by Benson, Jones and Child.

Claimants were the owners, who had no connection with the hiring of seamen.

The *Polly* was libelled on completing a voyage from New Bern, N. C. to Jamaica and back to New York. Child was one of the crew on the outward trip, but in Jamaica had been sent ashore to bring a hogshead of rum alongside in the small boat. Thereupon he had gotten drunk and left the hogshead in the boat exposed to the sun, to the great danger of the same. Upon this words had arisen between him and Capt. Dawson of the *Polly*, resulting in Child's accepting his discharge and signing a full receipt and release. Another man was taken in his place, but on what terms does not clearly appear.

Captain Dawson was evidently glad to get rid of Child, for, by the testimony of other foremast hands, the man had shipped for an able seaman, when he was not a sailor at all, or at least a very poor one.

Benson came on board at Kingston, having "come out of a Guinea Vessel & spent all his money, & the Constables on Shore were then searching for him." He agreed to work his passage to New York. It was amply proven that the *Polly* already had a full complement, and one Captain Brown who had lost his vessel "by a seizure" was going as a working passenger.

At Savannah La Mar Jones presented himself, having lately "come out of a Gaol in Cuba" in such a distressed condition that Captains Brown and Dawson gave him clothing "to relieve his poverty and nakedness." He made the same arrangement as did Benson.

At the same place Child appeared and stated that he could find no employment, and asked to be taken on again. This the captain refused, but permitted him to work his passage home.

The *Polly* then went to Davis' Cove, an obscure anchorage where there were no unemployed seamen, and here, according to one witness, Captain Dawson said to Jones that if he stayed by, an acknowledgment would be made him when he got to New York,—or words to that effect.

The allegations of the answer that all the libellants explicitly agreed to work for their passage was confirmed by another passage-worker, one Rust who had been in the Cuban prison with Jones, and deposed "that the planters where they went for subsistence would give them no more than a plantain & a herring a day, which reduced them to great distress," so that he (Rust) "took it as a great favor to be taken on board the said Sloop, that he might get a bellyful of victuals."

Libellants worked at discharging cargo on arrival, Benson for a short time, the other libellants till the vessel was empty. Several witnesses stated that libellants had asked the captain for a few dollars, and if he had given them something no libel would have been filed.

Other facts are stated in the opinion.

Mr. William Wickham for libellants;

Mr. Benjamin Kissam for claimants, in his filed brief argued; the libellants' right must be maintained either (1) upon an express agreement of which there is no proof, or (2) upon an implied promise, which is inconsistent with the general facts.

The Captain's statement at Davis' Cove if believed (as it should not be) amounts to no more than the promise of a gratuity, which is not wages.

If the Captain did agree to pay wages (as he did not) after arrival in New York, there was no consideration for such agreement. Nor are libellants entitled to pay for unloading ship, that being part of a seaman's duty and the men had agreed to do seamen's work for their passage.)

Dec. 24, 1770 The Judge delivered his decree as follows to wit:

I have fully considered the pleadings proofs and arguments in this Cause, and think it is abundantly made out that the Libellants all Entered on board the Sloop Polly at the Island of Jamaica upon an express agreement to work for their passages, without Wages—this is only opposed by the Testimony of Randle in his answer to the Defendant's first Cross Interrogatory and his Answer to the fourth direct Interrogatory, in one of which he says the Captain at Davis's Cove told John Jones one of the Libellants he would make him some acknowledgement to go to New York with him, in the other he says that the said Captain did promise the said John Jones to pay him for going the said Voyage. I take these two declarations by the Witness to have been but one by Captain Dawson, and for these reasons—1st. they were both said at Davis's Cove. 2^{dly}. Randall in his Answer to the Defendants first cross Interrogatory says, that he does not of his own knowledge know on what terms the said James Childs and John Jones two of the Libellants came on Board the said Sloop *further than* that he heard Captain Dawson at Davis's Cove tell the said Jones that he would make him some acknowledgement &c. Now from the words *further than* inserted in this Deposition I think it is beyond a doubt that the most that Randal heard the Captain say was, that he would make him an acknowledgement, and with this agrees Jones's own confession to Rust declared in Rust's further examination on the Defendants last Interrogatory that Jones said he had spoken to the Captain who said he would allow them something in their way if they went to New York with him, which is certainly different from a promise to pay him for going the Voyage, and at most can amount to no more than a Gratuity or donation that was to be measured by Captain Dawson's own will, and for which I am of opinion the Vessel is in no

sense liable, even if it stood in the fairest light without any testimony opposed to it, which is not the case, for George Brown in his answer to the seventh direct Interrogatory says “that at Davis’s Cove in Jamaica “after the said Sloop left Savannah La Mar one of the “Seamen belonging to the said Sloop was drowned, “and John Jones the Libellant at that time asked the “said Captain Dawson to put him on Wages—that “Captain Dawson then told him that he would not put “him on Wages, that he had hands enough on board “to carry the Vessel home that if he did not like to “stay on board and work his Passage he might go on “shore when he pleased—That the Deponent some- “time afterwards also told him when he spoke of “Wages to the Deponent that he was sure the Captain “would not give him any, for that there were hands “sufficient for the Vessel without him and advised him “to go on Shore if he did not chuse to go without “Wages.” here is an express declaration of the Captain to Jones, with a reason for not allowing him Wages (to wit) that he had hands enough without him, and if that was the case it would have been dishonest in the Captain to have given him Wages.

The only matters that remain now are, 1st. The Captain’s declaration at New York that he would pay the Libellants their Wages, and 2^{ndly}. their services at New York on board the Sloop after her arrival here—as to the first it appears the Captain had been arrested and confined and that he made those declarations to screen himself from other Suits or Warrants, and I am fully convinced that as the Libellants entered on board at Jamaica to work for their passages without Wages, a promise of the Captain to pay them Wages after the Service was performed, was a promise without a Consideration and would not bind Captain Dawson, or create a Lien upon the Vessel. as to the 2^d. (to wit)

their Services on Board in unlading the Vessel here, I am not clear, that their contract to work for their passages obliged them to assist in unlading the Vessel here, tho' I think the Captain might naturally conclude as they were in consideration of their passages and provisions to do the duty of Sailors, that that service was a duty in consequence of their original contract; and to remove any doubt about the matter if they did not do that service under their original contract it was incumbent on them to have asked certain hire from the Captain for those days, or made some bargain with him, or have waited at least till he directed them to go to work—of this there appears no Evidence, but the demand seems to arise only from their staying on board, which might have been permitted by Cap^t. Dawson meerly out of favor to them for some few days until they could get employ, as he knew they were necessitous.

This suit appears to me to have been brought by the Lybellants because the Captain's acknowledgement to Jones was not as large as the Libellants chose it should be, and not because they conceived any Wages due to them. Upon the whole therefore I do Decree that there is nothing due to the Libellants for Wages, and do Order that the Libel be dismissed & that the Libellants pay to the Defendants their Costs of Suit to be Taxed.

ANDREW ELLIOT QUI TAM VS PETER DOREY

A shipmaster is too much a citizen of the world to be discharged on common bail; he is *quasi* a foreigner, even assuming that statutes giving the right to a common appearance have any application to the Admiralty, which is not admitted.

(Libellant, the Collector of Customs, sued Dorey, master of the sloop *Sally*, for penalties amounting to £500 sterling in that Dorey having taken on 25 hogsheads of sugar at Montserrat and obtained a "sufferance" or permit for the same,

did thereafter procure fifty additional hogsheads of sugar, and alter and falsify his permit so that it appeared to cover the seventy-five hogsheads he actually brought to New York and endeavored to enter on the forged permit.

Respondent, having been arrested, appeared by Mr. Samuel Jones, who moved that)

Aug. 20, 1772. As the Deft had appeared & pleaded, he should be discharged out of Prison without Bail.

(The Advocate-General, Mr. John Tabor Kempe opposed)

Aug. 28. His Worship the Judge declaring that he had Considered the motion of the defendants Council for accepting a common Appearance Observes, That the statutes which direct a common appearance to be accepted do not apply to the Court of Admiralty; the Courts to which they apply being particularly mentioned. As to the Statute of the Thirty-first of Queen Elizabeth, that Stat. excepts foreigners, by which it seems to have some attention to the Ease of such persons only as have such Ties to their country as to keep them in it.

Masters of Vessels are so much Citizens of the World that they cannot be considered as tied to this or any other province; and it will be in vain to prosecute any person for a Penalty for the Breach of any of the Acts of Trade, unless the delinquent can be held in such a state as to be answerable for a penalty if convicted. I am therefore of Opinion that the defendant must be held to bail, and that in the whole sum sued for by the Prosecutor.¹

¹ For this matter the *Sally* and cargo were condemned and sold. Her crew filed libels for wages, but upon the Advocate-General answering that they were privy and consenters to the acts of Dorey, they apparently abandoned suit, as the proceeds of sale were distributed without any provision being made for the crew. Dorey's subsequent fate does not appear, but the Collector rarely pursued

HUGH WALLACE ET AL VS SLOOP ANN

An insurer may (*semble*) maintain an action *in rem* for spoliation of cargo by the Master, to the loss of the insured.

(Mr. James Duane on behalf of libellants caused to be issued process returnable May 14, 1771 against the Sloop *Ann*, etc, (Ebenezer Brockway, master and owner,) under which the vessel was duly taken in custody.

The cause of action was that libellants had insured to one Henry White the safe delivery of certain moneys and effects shipped by White on the sloop, in respect of which Brockway had committed barratry, to the loss of White and the consequent liability of the libellant insurers. Wherefore libellants asserted that as the sloop was faithfully bound to the performance of the contract of carriage, they were entitled to satisfaction by sale of her, which they accordingly prayed.

Brockway appeared by John Morin Scott and filed a plea to the jurisdiction in that the alleged acts had occurred on land, to wit: within the City of New York.

The record of court proceedings ends here, but from the filed papers it seems certain that the *Ann* was sold. The proceeding, however, shows that in the opinion of two of the best known counsel of the time, insurers were entitled to maintain whatever action of this nature the insured could promote.)

RICHARD NICHOLLS COLDEN QUI TAM VS ELEVEN
HOGSHEADS OF MOLASSES

In an action on the instance side, defaults on three proclamations are conclusive; no claim can be admitted thereafter.

(Libel of Information for illegal importation.)

Sept. 27, 1774 Mr. Advocate General on behalf of the Informant moved that the last usual proclamation might be made in this cause, But John Morin Scott Esquire one of the Proctors of this Court moved that he might have leave to claim.

persons when the property was surrendered without serious opposition.

Mr Advocate General for the Informant opposed the motion and urged to the Court that the Claimant had lost his day & applied too Late, and that no Claim could be admitted after the third default entered, to which opinion the Court inclined but Nevertheless his Worship the Judge, Ordered that the deputy Register should search the minutes of this Court whether there is any Instance of a Claim being admitted after the third default is entered & that he make report to the Court with all Convenient speed.

October 8. The Deputy Register agreeable to the last Order in this Cause reported to the Court all the Instances on the Minutes where any Claims have been admitted after the third default, which being examined & perused by the Court, it appears to the Court that the Instances are principally in prize Causes where the Claims were admitted within Twenty days after the Libel filed, pursuant to the Statute, and that none of the Instances pointed out by the Deputy Register are applicable to this Cause.

(The fourth proclamation was thereupon made and decree given for libellant by default.)

This is Judge Morris's last known decision on any litigated or opposed matter. After August, 1772, there is no record of any private litigation in the Vice Admiralty. The Court was used only to enforce the revenue and navigation laws, and an increasing number of libellants were the commanders of naval vessels. Smuggling and illegal trading were more vigorously pursued than ever before, but this is the only legal question mooted for nearly three years; the condemnations were unopposed. A book of minutes ended in November, 1774, and is found; the one next opened has disappeared. The last known libel was filed February 24, 1775, and so far as the records show Judge Richard Morris's last act as the Admiralty Judge was to tax a bill of Costs on March 29, 1775.

REPORTS OF CASES IN THE COURT OF
ADMIRALTY OF THE STATE
OF NEW YORK.

At a Court of Admiralty held for the State of New
York in the City of New York

Present The Honorable Lewis Graham, Esquire

JAMES DALL ET AL VS SHIP BETSEY
RICHARD HALL VS SAME
JOHN JONES ET AL VS SAME
JOHN HOWLAND VS SAME

Semble seaman's wages, though earned on earlier voyages, preferred over demands for necessities furnished for a later voyage.

(Mr. Alexander Hamilton on behalf of Dall et al. filed libel May 18, 1784, on a bottomry bond given in New York in October 1783, when the *Betsey* was about to depart for London, whence she had returned shortly before libel filed. Bills of exchange had been drawn on London for the amount of the bond, and not paid.

Mr. Morgan Lewis, on behalf of Hall, Jones et al. filed libels May 27th, showing that shortly prior to the execution of said bottomry bond, but on the same voyage they had furnished necessities, i.e., provisions, to the ship, and received Bills of Exchange on London for the same, which likewise had remained unpaid. No express hypothecation of the ship was alleged.

Mr. Brockholst Livingston on behalf of Howland filed libel June 16th, showing that libellant was the administrator of sundry deceased seamen who had served on board the *Betsey* at divers times, the latest of which periods of service terminated in February 1783; and whose wages remained unpaid.

Answers to these libels were filed by the master admitting all the allegations of libellants; the *Betsey* was condemned

and sold without opposition and her net proceeds applied to the payment of the bottomry and seamen's wages. There is no evidence that Hall and Jones made any objection to such preference over them of wages for eastern voyages.)

CHARLES MARCH ET AL VS SUNDRY GOODS
FROM A DESERTED VESSEL

Salvage of 50 per cent awarded on goods taken from a derelict. One-third of the salvage given to owner of salving ship and the balance distributed according to merit shown. Passengers who contributed skill, or labor, or both, share in salvage.

A slave's share awarded to his master.

(In August 1784 the Brigantine *Port Roseway* on voyage from Jamaica to New London fell in with an abandoned vessel in Lat. 23.30 N. The weather permitting, the *Port Roseway*, both by using small boats and lying alongside, transferred to herself a considerable amount of the derelict's cargo. This work occupied two or three days, when, the weather becoming threatening and the wreck having five feet of water in her hold, the *Roseway* left and instead of continuing to New London came to New York and deposited what she had salvaged with Bourke & Donnan, merchants of that city, who on September 3rd sold it at public auction, paying duty on the goods. The proceeds were certainly not brought into court until libel filed, but were subsequently placed with or under control of the Register.

On March 4, 1785 Mr. Alexander Hamilton filed the above libel on behalf of certain passengers on the *Port Roseway* and two of her seamen, without giving any reason for the absence of owner and others of the crew. Nothing was said in the pleading of the sale of the goods which were alleged to be in the hands of Bourke & Donnan. It was stated that all the libellants had personally labored in and about the salvage.

Due proclamation was made, final default noted, and condemnation ordered November 6th, but the court refused final decree for reasons not stated in any remaining record.

On Feb'y 1, 1786 Messrs. Wm S Livingston & Thomas Smith filed a claim & answer verified by Bourke & Donnan, purport-



*Seal of the Court of Admiralty
of the State of New York*

ing to be on behalf of the owner & balance of crew of the *Port Roseway*, alleging that no one had ever claimed or demanded anything in respect of these salvaged goods or their proceeds, except the original libellants and submitting themselves to the Court.

On Dec. 22, 1786 Mr John McKesson filed the claim and answer of Daniel McComick attorney in fact for Hyem Cohen of Jamaica, demanding the surplus of the Cotton rescued, describing it by the same marks as had been recited in the libel, & producing a Bill of Lading therefor on the Brigantine Atkinson which had been abandoned at sea

On May 31, 1787 Mr William Cock as proctor and attorney in fact for Richard Hall of Shelburne Nova Scotia filed claim & answer setting forth that Hall was sole owner of the *Port Roseway* that his vessel had been somewhat injured in performing the salvage, and he damaged by the act of the Master in going to New York instead of New London.

The opinion of the court is as follows:)

(*Date uncertain*) This cause has been long depending before sufficient testimony was obtained whereon to found a Decree. I have with much Care & Diligence examined and Considered every pleading Account Exhibit Deposition Evidence & Circumstance in this Cause, and it fully appears that the Goods Wares & Merchandize in the Libellants Libel mentioned were saved out of a Deserted or wrecked Brigantine or vessel on or about the fifth day of August last past and the two following Days by John Shannon the master, the marriners and passengers on Board of the Brigantine Port Roseway and bro't to the City of New York where they were sold by Mr. Anthony L. Bleecker a Licensed Auctioneer, under the direction of Mess^{rs}. Gibbon Bourke and John Donnan of the said City merchants, as agents for the Salvors. That the Gross amount of the Sales was £1436.7.3 and the neat amount of the Sales paid by Mr. Bleecker to Messrs Bourke & Donnan was £1359.9.2.

But Mr Bleecker as an auctioneer (agreeable to his Oath & the Duty of his office) has charged a State Duty of two & an half per Cent. amounting to £35.18.2. which appears improper to be allowed because if the salvors or any of them had proceeded properly and as it was their Duty to have done, the Duty would have been saved and must therefore be added to the sum paid to Messrs Bourke & Donnan, which together amount to £1395.7.4 & which is the sum in which I shall decree.

Out of this sum of £1395.7.4 I order and Decree that there be paid to Alexander Hamilton Esquire proctor & of counsel for the Libellants for costs taxed as due him and the other officers of the Court the sum of £81.10.5 and there will remain for Distribution the sum of £1313.16.11. [subject to the payment of such Costs and Expenses as have arisen or may hereafter accrue on the part of those who have Claimed or may hereafter appear entitled to receive any part or parts thereof]¹

The one moiety of the said sum of £1313.16.11 amounting to £656.18.5½ I adjudge order & decree to be paid for the salvage of the Goods wares & merchandizes so saved in the proportion following viz^t: the one third part thereof amounting to the sum of £218.19.5¾ to Mr Richard Hall owner of the s^d Brigantine Port Roseway, subject to the payment of the costs on his own claim, and to the proportion of the costs in the claim of G. Bourke & John Donnan directed to be paid by him: and the remaining two thirds parts of the sum so decreed for salvage I do adjudge order & decree to be divided into Twenty Two Equal Shares or proportions.

After publication in the Cause several persons have been examined as witnesses in open Court, and every

¹ Apparently the Judge got thus far in 1786; at a later date he struck out the bracketted sentence, and wrote the balance.

reasonable means in the Power of the Court has been used to obtain evidence as well of the persons on board of the Brigantine Port Roseway at the Time the said Goods were saved (some of whom are not named either as Libellants or Claimants) as of their respective merits. And the following facts fully appear to wit: that the Libellant first named in the Libel viz^t. Charles March of Boston in the State of Massachusetts Gentleman, as described in the Libel is an infant, a small boy of tender age, who was a passenger under the Care & Direction of Timothy Penny and was altogether unable to give and in fact did not give any aid or assistance in the preservation of the said Goods and merchandize. That Peleg Noys junior (who was probably intended by the Person in the said Libel called Peter Noys junior of Stonington in Connecticut) was a passenger on Board of the Brigantine Port Roseway, that he was very sick during the passage, that his Life was despaired of and was therefore unable to give any assistance in saving the said Goods, and that therefore the said Charles March and Peleg Noys junior cannot be entitled to any reward for the salvage of the said Goods. That Henry Harris one of the Marriners of the said Brigantine was indisposed and unable to do much of the Duty of a marriner on board. That a Mulatto boy said to be a servant or slave of Abraham P. Mendez did assist at times and was of some service in the saving of the said Goods and Merchandize. That William McKinney and Samuel Starr (who are not named in the pleadings in this suit) were on board of the said Brigantine and active in saving the said Goods and Merchandize; and John Thompson and Gad Wells who had been masters or Captains of vessels, worked assisted directed and were active in saving the Goods and merchandize that were so saved and preserved.

I do therefore adjudge determine and decree the

said twenty two shares or proportions of the two thirds parts of the sum so decreed for salvage, to be paid and distributed by the Register of this Court as follows¹

ROBERT THOMPSON VS SHIP MASBOROUGH & LADING

An award in the nature of salvage made to one who, at the request of the master of a stranded vessel, procured laborers to assist in removing cargo, and either paid them himself, or assumed liability for their reward.

(On Dec. 22, 1784, Thompson filed libel as above, alleging that the British ship *Masborough*, while bound from London to New York and worth with her cargo over £50,000, had gone ashore on Long Island, and had, with his efforts largely contributing, been floated and brought to port, wherefore he demanded salvage of £5000.²

The ship was claimed by George Dancer, her master, and such of the cargo as had been seized by John Murray, Isaac Gouverneur Jr., and John Read.

The master denied that Thompson had done anything for the ship at all, which on December 12th went aground at Jones Inlet (near Rockaway) in a fog, and was gotten off on the 17th, after being lightened under the supervision of her own captain; and a local pilot sent down by Murray et al., the consignees of cargo.

As to the cargo, it was admitted in the pleadings that Thompson, who was the son of a resident of Long Island who

¹ The rest of the decree goes into the details of distribution, the Court doing what Judge Richard Morris thought he had no right to do. (*The Nancy*, ante.) The Master received four twenty-seconds, the Mate two, the two seamen passengers three between them, and all the other workers one, except the sick sailor Harris and the slave, between whom one twenty-second was divided, the slave's earnings going to his master. The other moiety of the fund was reserved for further claims, of which there is no record. Cohen's cotton was but a small part of the salvage.

² This is the earliest instance of a salvor estimating in his libel the value of his own service.

had a carriage and some other goods on the *Masborough*, had gone aboard her, informed the master that all efforts to get the ship off would be in vain, as no such thing had ever been done before, and taken away in a shore boat his father's goods. That the master had then and there asked him to get men (he having local acquaintance) to assist in manning boats for lightening ship under the direction of Matthew Daniel, the local pilot, which he had done, but had never again been on the ship.

Claimants of cargo especially averred that Daniel was their agent, that Thompson might have worked for him, that they had been at all times ready to pay a reasonable sum for libellant's services, if any, but that he had filed libel without any demand or request, and had taken from the ship not only his father's carriage but the trunk of one Dennison, which was subsequently discovered in the Brooklyn residence of the elder Thompson, with some £30 worth of its contents gone.

The evidence fully substantiated Captain Dancer's answer; and further showed that Thompson was not skilled in any maritime labor, and had taken no physical part in lightening the ship, but that he had procured laborers, and paid some of them; while to others he had given his own notes of hand. This assumption of liability seemed gratuitous; the excuse for it was that Thompson was known in the neighborhood, and the claimants (who bought the said notes when and as they could) were not.

Messrs. Morgan Lewis & Alexander Hamilton for libellant;
Messrs. William L. Livingston & Thomas Smith for claimant.

In respect of the ship—Opinion was rendered shortly before March 8, 1787, as follows:)

The Proofs Allegations and Arguments of the Parties in this Cause have been duly heard and Considered and It Appears to the Court that the Libellant was not in anywise instrumental in saving or Preserving the said Ship but on the contrary that the libellant was opposed as much as in him lay to the taking of any measures to preserve the said Ship and was of Oppin-

ion that she cou'd not be got off the barr where she then Lay and discouraged every attempt for that Purpose, And that the said Ship was removed from the Barr where she had run Aground and was bro't into the Port of New York by Persons employed by the Claimant and others who assisted him without any aid or assistance of the libellant. I do therefore Adjudge and Decree that the libellant take nothing by his said libell in this Cause, That The said Libell as far as it respects this Cause be dismissed and that The libellant pay to the Claimant his Costs in this Cause to be Taxed

(In respect of the cargo a separate opinion was filed as follows:)

I have duly considered The Pleadings Depositions Exhibits and Proofs in this Cause and it Thereby appears that the Libellant After the said ship Masborough was Laying on the Barr near Jones' Inlet went on board and encouraged the Men at work in unlading part of the Cargo that he was further instrumental in saving & Preserving a Part of the Cargo of the said Ship by taking the direction of a number of men who came with the Boats to assist in Unlading the Cargo and by making himself responsible to many of them for their wages while they were employ'd in that service, and by attending in person with a Guard on the beach to receive the goods unladed from the said ship and Protect them from Plunder & embezzlement; That from the proof filed in the Cause it further appears that the libellant in that service advanced certain Sums in Cash and that he also by Notes of hand given to different persons became answerable for Sundry other Sums of money due to them for their services in Unlading and Preserving parts of the said Cargo.— That from The Evidence taken and filed in the cause

and from an Admission of one of the Claimants on examining the Accounts in my Presence it Apears that the Libellant Advanced in Cash in that Service the Sum of ninety five pounds nine shillings & eight Pence and gave notes of hand for Sundry Sums amounting in the whole to one hundred and sixteen pounds four shillings and eight pence which notes have been since paid off and discharged by the Claimants or one of them, For which Services The libellant is clearly entitled to a reasonable compensation and to repayment of his disbursements. [For] The Sum of money for which he passed his notes of hand and his services [he] is entitled to receive from the Claimants the sum of Three hundred and thirty one pounds fourteen Shillings and four pence that is to Say to receive from the Claimants the said Notes of hand by them paid and discharged amounting in the whole to one hundred and Sixteen pounds four Shillings and eight pence and the further Sum of Five hundred and fifteen pounds nine Shillings and eight pence for his Services and disbursements which said sum of Two hundred and fifteen Pounds nine shillings and eight pence and the said notes of hand I order and Decree to be brought into this Court by the Claimants for the Use of the Libellant together with the amount of the Libellants Costs to be Taxed

BARTHOLOMEW TERRASSON ET AL VS SHIP DILIGENT

The debt secured by an express hypothecation of half a ship to secure payment of promissory notes, enforced by seizure and detention of the vessel.

(Mr. Brockholst Livingston for libellants filed libel Feb. 18, 1785, setting forth that libellants, merchants in Philadelphia, had at the request of La Gourgne & Charton of that City, owners of one half of the *Diligent*, advanced 6050 Spanish milled dollars for the purpose of fitting out the vessel for

a voyage to St. Marc, Santo Domingo; for which advance said owners of one half had given their promissory notes and for the payment thereof hypothecated in writing their share in the ship and the cargo to be laden upon her when fitted for the voyage. The voyage was performed and the notes not paid. The ship being in New York, process was prayed against the moiety belonging to La Gourgne & Charton that the same might be condemned and sold to satisfy the notes with interest and damages.

The process issued explicitly commanded the Marshal to seize the ship, which was done. Mr. Alexander Hamilton appeared for Ross & Vaughan owners of the other half, and evidently settled the demand after the ship had been in custody eight days.)

JOHN LAMB QUI TAM VS TWO TRUNKS OF MERCHANTIZE

None but a freeholder is a qualified stipulator. Goods seized because landed without paying or securing duties cannot be released on security given by claimant. Goods so landed are forfeit, though the act of the claimant was in ignorance of the law, and with intent to seek out the Customs officers and pay duty.

(Libel by the Collector of the Port of New York for himself and the State in equal shares, to condemn the trunks aforesaid because they had come to the city by water and had been landed without paying or securing the State duty or tariff.

Jean Baptist Riolz claimed the trunks, and answered that he was a Frenchman ignorant of English, had gone from New York to Philadelphia, there procured the contents of the trunks in settlement of debts, returned to New York via Elizabeth Town, New Jersey, and taken ferry to the City. On arrival he had left the trunks on the ferry boat and gone in search of Peter Nean, his friend and agent, not finding him at home he had returned to the ferry boat, to find the master thereof threatening to depart and take the trunks with him. Being then advised (but by whom does not appear) that he might land the trunks and have them examined later, he did

put them on shore, and went to a tavern for a meal. While he was there and within an hour of landing seizure was made.)

July 23, 1785. Mr. Hamilton for the claimant then moved that John James Coulougnac of the City of New York Merchant might be received to stipulate to the Informant for Costs on the part of the Claimant. The same was opposed by counsel for the Informant who alledged that the said John James Coulougnac is not a freeholder in this State.

Mr. Hamilton for the claimant made a motion that the Merchandize in the Information mentioned might by order of the Court be delivered to the Claimant on his giving Sureties by Stipulation for payment of the appraised value thereof.

Aug 6. It was considered and adjudged by the said Court that the said John James Coulougnac not being a freeholder is not duly qualified to be received to Stipulate for Costs. And it was by the said Court then also farther considered and adjudged that as the Law in which the Information is founded has directed a sale of the Goods seized if they should be condemned it would be improper to order them to be delivered to the Claimant on an appraisement.

(Thereupon the cause was heard on the libel and answer and decree given without opinion by the Court in favor of libellant; one half to Lamb personally and one half to the State of New York. The goods sold for £1210.9.3.

Mr. Edward Dunscomb for Lamb;

Mr. Alexander Hamilton for Riolz.¹)

¹ There remain indications of rather less than a hundred separate litigations in the Admiralty Court of the state. More than half were libels of information by Lamb. This is the only case in which any record of argument exists, and that because Hamilton filed an appeal, and the Register prepared draft Apostles, which included all appropriate extracts from the lost minute book.

The existence of a minute book renders it possible in most cases

to ascertain the result of a litigation in the Vice Admiralty. If the last minute is inconclusive, it is certain that the matter ended in settlement or abandonment. There being no known book of that nature relating to the State Admiralty, some pleadings and depositions are found so incomplete as to render a formal report impossible, yet instructive in studying the growth of law.

Bush vs. McRuth and *Nosworthy vs. The Glaudina* (1786) are two cases of seamen's wages wherein, for the first time in the records, the defence of desertion was set up. Both vessels were British, and in the *Glaudina* the depositions indicate clearly that men who had shipped for a round trip from a European port to America and back, were expected to break away if wages were better in New York.

Williamson vs. The Hampton (1786) is a small wages case in which a two-thirds owner at once appeared and admitted the liability. There may have been other points involved, but it is a plain and early instance of using a small claim to procure a judicial sale, and probably get rid of a minority owner.

Wilson vs. The Betsey (1787) illustrates the spread of insurance and the groping of insurers for methods of minimizing loss. Libellants insured the *Betsey's* cargo from New York to Savannah; the vessel was caught in a storm, seriously damaged, and driven into New Providence, Bahamas. In order to defray the expense of refitting, the master sold a large part of the cargo at public auction, thereby procured the necessary funds, returned to New York, and is stated to have assigned to the insurers *his* claim against the vessel for her repairs and new equipment procured through sale of cargo. The libel proceeded to two proclamations, and was probably settled.

McDougal vs. 9 Bags of Silver (1788) is probably the most extreme case of salvage to be found. Captain McDougal, of the schooner *Grace*, found the Master and crew of *L'Archiduchessa Marie Christina* in a yawl, having escaped from their sinking ship two days before. The *Grace* took the shipwrecked mariners aboard, brought them to New York and then filed this libel against all the money found in the yawl. The amount of the treasure does not appear, but libellant apparently felt obliged to give some excuse for suit, and alleged that so many more mouths on the *Grace* rendered short allowance necessary. Brockholst Livingston filed this libel and apparently procured a settlement.

APPENDIX

NOTE A

RECORDS OTHER THAN THOSE OF NEW YORK

THE New Hampshire Vice Admiralty was the subject of an address by Judge Edgar Aldrich, printed in proceedings of New Hampshire Bar Association, 1909-1910. The surviving papers are too scanty to be called a history of the Court.

From the Massachusetts Court there survive a few minute books and certain volumes of "Accounts of sales." John Noble, Esq., has written a full account of these books, printed in Volume 8, *Publications* of the Colonial Society of Massachusetts. Tradition has persisted to the effect that the British officials removed to Halifax, when Boston was evacuated, some of the Admiralty (and other) records. Mr. Otis G. Hammond, Secretary of the New Hampshire Historical Society, after personal investigation of this matter, tells me that search in Nova Scotia reveals no evidence that there ever were such papers there—certainly there are none now discoverable.

It is believed that some remnants of the Rhode Island Admiralty exist upon the files of the Superior Court of that state and in the Court House at Newport. So far as I know, nothing has been published from that source. The Library of Congress contains a copy made from British records of proceedings in the Vice Admiralty Court of Rhode Island, 1756-1758.

Connecticut and New Jersey never had resident Admiralty Judges, and while deputy Judges probably held court there at times, it is certain that during the period covered by this book the major portion of what business arose in these colonies was transacted in New York. The record of one session held at Perth Amboy remains among the New York papers. No other documents have been discovered, but there exists a written protest by Governor William Franklin of New Jersey against making seizures in Jersey waters and taking the *res* to New York for trial, thereby preventing his sharing in the proceeds of condemnation.

On the files of the United States District Court in Philadelphia are some of the minute books of the Colonial Ad-

miralty after 1735, and some similar volumes from the Admiralty Court of the state of Pennsylvania. No file papers are known to exist, and perusal of the books shows that it was not the practice to enter at large on the minutes the reasons for decision.

Maryland is not known to contain any Vice Admiralty remains. The Library of Congress possesses one volume entitled Records of the Vice Admiralty Court 1754-1773. It has been used as a scrapbook and also for making entries regarding the payrolls of "The Invalid Regiment 1783."

Delaware and North Carolina are also void of Vice Admiralty remains so far as is known, as also is Virginia, although it is believed that some Virginia documents existed until the Civil War and at the Court House in Norfolk; but nothing is discoverable of them now.

The United States District Court in Charleston possesses the minutes of the South Carolina Vice Admiralty from 1715-1775, but there are no file papers, and it was not the practice in that colony to enter opinions at large upon the minutes.

NOTE B

RULES, OR GENERAL ORDERS ENTERED ON THE MINUTES OF THE COURT OF VICE ADMIRALTY.

May 12, 1730. ORDERED, That for the future all Subpoenas Issuing out of This Court be served by the Marshall of this Court & no other person whatsoever.

March 12, 1741. ORDERED that for the future whenever an Answer is filed in this Court, unless the Lybellant file Exceptions in Six days, he shall be barred from Excepting thereto.

October 1, 1746. ORDERED That all Commanders of Private Vessells of Warr and Prize Vessells that shall come into this Port, Do Immediately Deliver unto this Court, all papers and writings whatsoever taken from the enemy.

May 6, 1748. ORDERED That the Marshall of this Court

be Allowed One shilling for every person he gives Notice to, every time to Attend this Court in every Cause.

May 13, 1749. ORDERED That no Lybell be fyled or process Issue for the future untill the Lybellant stipulate with one or more Sureties in Forty Pounds each for Costs, and that none but Freeholders be Accepted as Securities.

Jan. 12, 1763. It appearing to this Court that the obliging all suitors to Stipulate in Forty Pounds with security before the issue of process may be attended with great inconvenience, more especially to seamen and transient persons who may find it difficult to find security in the first instance in so large a sum: It is therefore ORDERED that for the future every person applying for the process of this Court be obliged to stipulate with one security who is a freeholder in the sum of twenty pounds only for Costs, as this Court can order a further stipulation if necessary: And recommended to the several proctors to be as concise as possible in their Libels pleadings & Interrogatories in order to save Expence to the parties.¹

NOTE C

THE EARLIEST FORM OF PROCESS *IN PERSONAM*.

Province of New York ss:

Lewis Morris, Esqr Commissary and Judge of the Court of Admiralty for the Provinces of New York and New Jersey and the Colony of Connecticut:

To Capt John Fred Marshal of the Court of Admiralty for the said Provinces:

These are in his Majesty's Name to command you, That

¹ No rules of court are known to have existed, other than these general orders. No reference to such regulations is found.

Libellants ordinarily stipulated in £40 before the order of 1749. Respondents' security varied, being (in actions *in personam*) of the nature of bail to the action. In prize causes the claimants' stipulation for costs was usually £150. The reduction of security by the order of 1763 did not increase the business of the court; on the contrary it decreased after 1765.

you take and arrest Jacob Mitchell Marriner late belonging to the private Snow or Vessell of Warr called the Dragon :

And him to detain and keep under safe and secure arrest, until he shall lawfully appear; or that he be had on Saturday the 9th day of this Instant month of August (if it be a Day of Jurisdiction; otherwise on the next Day of Jurisdiction then next ensuing) in the judicial Place, or Place used for Jurisdiction in the said Province of New York, to wit the City Hall of the City of New York, Before me in a certain Civill and Maritime cause to answer Jaspar Farmer, for not performing his covenant made with the said Jaspar Farmer within the jurisdiction of the said Court of Admiralty.

And how and in what Manner you have executed this precept, that you then and there certify unto me under your hand; and for so doing this shall be to you or any of you a Sufficient Warrant.

Witness the Seal of the Admiralty for the said Province of New York the fifth day of August in the twentieth year of His Majesty's Reign and in the Year One thousand seven hundred and forty six.

Lewis Morris.

PROCESS IN PERSONAM.

The common form used (*mutatis mutandis*) in the Vice Admiralty, the State Admiralty and the United States District Court for New York, until arrest in contract cases abolished.

Province of New York ss:

George the Second by the Grace of God of Great Britain France and Ireland King Defender of the Faith, &c.

To our Marshall of our Court of Vice Admiralty for the Province of New York Greeting :

We command you that you arrest and take John Marshall and him detain & keep under safe & secure arrest, until he shall lawfully appear, or that he be had on Tuesday the twentyeth day of May instant (if it be a day of Jurisdiction otherwise on the next day of Jurisdiction then next ensuing) in the said Court of Vice Admiralty to be held at the Province Arms in the City of New York, Before the Honble Lewis

Morris Esqr Commissary & Judge of the said Court; To answer unto Wm Hine in a certain Civill & Maritime Cause.

Witness our Trusty & well beloved Lewis Morris, Esqr Commissary & Judge of our said Court. Given under the seal of the said Court at New York the sixth day of May in the third year of our reign Annoq. Dom. 1760.

Smith Junr proctor

Per Cur. Pr Silvester D.
Register.

NOTE D

PROCESS IN *REM*, STATE ADMIRALTY.

(This form, or rather epitome of the libel, would have been acceptable in the Vice Admiralty, or the United States District Court, until, at the earliest, 1810.)

SEAL OF THE COURT
OF ADMIRALTY OF
THE STATE OF NEW
YORK

The People of the State of New York by
the Grace of God free and Independent
to the Marshal of our Court of Admiralty Greeting Whereas Gerhard Shard

a marriner hath exhibited a certain Libel in our said Court against the Ship or Vessel called the Betsey her Tackle and Apparel whereof Thomas Coates now is or lately was Master; and whereas John Howland Administrator of all and Singular the Goods and Chattles Rights and Credits which were of John Storey Christopher Haslem and William Daniel Respectively hath filed a Libel in the said Court against the said Ship or Vessel with her Tackle and Apparel The Libellants respectively seting forth that the said Vessel is liable and Chargeable for Marriners wages TO WIT for wages due to the said Gerhard Shard, and for wages due and unpaid to them the said John Storey Christopher Haslem and William Daniel Respectively in their respective Lives time and praying that the said Ship or Vessel may adjudged and sold for payment of the Wages due and their respective Costs and Charges in the premises. We therefore command you that you attach the said Ship or Vessel with her Tackle & Apparel and the same detain in your Custody until further Order of this

Court And that you give due monition and Notice to Thomas Coates late Master of the said Ship and to all other persons knowing or having anything to say why the said Ship should not be condemned and sold pursuant to the prayer of the Libels respectively to be and appear in the said Court of Admiralty to be held for the said State at the City Hall of the City of New York on Monday the twenty first day of June Instant at ten of the Clock in the forenoon to make their allegations in that behalf and to put in a Claim for the same and what you shall have done herein do you then and there make Return to our said Court. Witness the Honorable Lewis Graham Esquire Judge of our said Court of Admiralty the Sixteenth day of June in the Eighth year of our Independence.

McKesson

B. Livingston Proctor

NOTE E

SEAMAN'S LIBEL FOR ILL TREATMENT BY MASTER,
BROUGHT BY THE ADVOCATE GENERAL.

PROVINCE OF NEW YORK
COURT OF VICE ADMIRALTY

To the Honorable Lewis Morris
Esq^r. Commissary and Judge of
the Court of Vice Admiralty in
and for the Province of New
York.

The Libel of Peter Collis late of the City
of New York Mariner

In all humble Manner sheweth unto your Honour

That sometime since the said peter Collis shipped himself as a Mariner on board a certain sloop called the Dove under the Command of one Jesse Smith, bound on a trading voyage to some Port of the West Indies,—That he sailed on the said Sloop on the said voyage, That on the said voyage he fell sick having received a Wrench in his Back in the service of the said Sloop, That afterwards to wit on the fourteenth Day of April now last past, on the high Seas and within the Juris-

diction of this Court the said Sloop the Dove then being off La Marr (a port in an Island of the Granades belonging to the French King and in possession of his Subjects) the said Jesse Smith ordered your Libellant the said Peter Collis to go on Shore there to a place called La Magrine about Ten Miles distant from the said port, with a message to one Mr. Bayess a Subject of the said French King to which the said Peter Collis your Libellant replied he was not able to go, whereupon the said Jesse Smith in a great Rage saying he would make him (the said Peter Collis) go, then and there on the high seas and within the Jurisdiction of honble Court did violently and outrageously assault beat bruise and wound the said peter Collis with a large stick, your Lybellant the said Peter behaving with all Humility said it was not his Duty to go to La Magrine by Land, but was very willing to do what the said Jesse Smith should order him to do on board the said Sloop (which your Libellant humbly conceives ought not to have been taken ill by the said Jesse Smith, as he the said Peter Collis could not have justified holding any Correspondence or Communication, with or going with any Message to the Enemies of our Sovereign Lord the King) And your Libellant further shews unto your Honour that the said Jesse Smith not satisfied or appeased by any Thing your Libellant could say or offer in his Behalf, nor moved with the weak condition your Libellant was in by Reason of his Sickness above mentioned, on the high seas and within the Jurisdiction of this Court, still continued with the stick aforesaid barbarously & cruelly to beat bruise and wound the said peter Collis, and beat him therewith until he broke the same by beating your Libellant And your Libellant further shews unto your Honour that the said Jesse Smith having so beaten bruised and wounded your Libellant in Manner as above mentioned, did immediately then and there compel him to go into the Boat belonging to the sd. Sloop the Dove, and ordered two of the Crew belonging to the same Sloop to put him on shore, That soon after the said Boat had been put off from the said Sloop to carry your Lybellant on Shore, the said Jesse Smith not yet satisfied with beating and abusing your Lybellant, ordered the said Boat to be brought on board the said Sloop

again, that he might again illtreat your Libellant, That your Lybellant dreading again falling into the Hands of the said Jesse Smith, before the Violence of his Rage abated rowed in hard for the Shore, that thereupon the said Jesse Smith borrowed a Boat belonging to another Vessel lying near the said Sloop the Dove and on the high Seas and within the Jurisdiction of this Honble Court pursued after the said peter Collis threatening he would take your Libellant on board the said Sloop the Dove, tie him up and beat him as long as your Libellant had life left in him or to that effect, so that your Libellant in order to escape from the Hands of the said Jesse Smith, and such inhuman & barbarous Treatment was obliged to jump out of the Doves Boat and swim on shore to the Enemy to the great Danger of his Liberty and Life, as well from the Enemy as by being much weakened and unfit for swimming occasioned by the Illness and cruel beating above mentioned, That your Libellant by such the severe and barbarous usage above mentioned is greatly hurt, the said Jesse Smith giving him several most violent Blows on his Head, and broke the bone of one of his little Fingers from neither of which he is yet recovered and fears he never shall, All which Actings and doings of the said Jesse Smith are exceeding cruel and barbarous and contrary to equity and good Conscience, and without just or reasonable Cause and to the grievous Damage of the said Peter Collis To the End therefore that the said Jesse Smith may fully answer the premises, And that the said Peter Collis may have full recompense and satisfaction for the Damages which he hath sustained by the Injuries aforesaid, and that such Relief may be granted to and had by the said Peter Collis as to your Honour shall seem meet the said Peter prays the advisement of this Honble Court, and due process in the Law against the said Jesse Smith to compel him to answer to him the said Peter Collis concerning the premises. And your Libellant shall ever pray &c.

J. T. Kempe, proct^r. for Libellant

NOTE F

LIBEL FOR FORFEITURE OF ILLEGAL TRADER;
BROUGHT INTO PORT BY A PRIVATEER.

PROVINCE OF NEW YORK
COURT OF VICE ADMIRALTY

To the Honourable Lewis Morris
Esqr. Commissary of the Court of
Vice Admiralty for the Province
of New York in America.

Archibald Kennedy Esqr. Collector and principal officer of his Majesty's Customs for the Port of New York in America who as well for our sovereign Lord George the Second by the Grace of God King of Great Brittain, France and Ireland Defender of the Faith &c And the Honourable James DeLancey Esqr. Lieutt. Governour and Commander in Chief of the province of New York and Territories thereon depending in America as for himself in this part prosecutes, comes here into the said Court of Vice Admiralty for the Province of New York this fifteenth day of September in the Thirty first Year of his said Majesties Reign and Gives this Court here to understand and be informed That one Daniel Southers Master and Commander of a certain Vessel or Schooner called the Joseph belonging to the port of Boston in New England port and place belonging to his sd. Majesty George the Second in America on or about the fourteenth day of June last past being at Amsterdam in the Province of Holland in Europe did ship lade and take on Board his sd. Schooner Thirteen Chests of Tea fifty Reals of Rope Yarn And divers other goods and Commodities to this Informant unknown of the Growth production or Manufacture of Europe and of the East Indies And having taken his Dispatches at Amsterdam aforesaid he soon after set sail with his said Schooner with the Goods and Commodities aforesaid on Board the same for the Colony Rhode Island or some other port or place belonging to his said Majesty King George in America there to Land import and put the said Goods and Commodities on the Shore, And altho' the said Goods and Commodities in fact and truth were at the time of Shipping the same in Holland intended to be imported and Landed in Some one of his said Majesties Plantations or Colonies in America as above alleged Yet the

said Daniel Southers in Order to Colour his ill design and avoid the several statutes relating to the Plantation Trade did Cause a Charter Party to be drawn between him and one John Hudson in Amsterdam af^d. purporting to be a Charter party for a Voyage with the s^d. Schooner to the Island of St. Johns with Leave to Touch at Rhode Island af^d. and Caused Bills of Lading to be made for the Delivery of the said Goods and Commodities to one Peter Runnels at St. Johns which was signed and executed by the s^d. Daniel Southers as bona fide Transactions But in fact and Truth were Executed and Signed purely to prevent and Hinder the s^d. Goods and Commodities from being Seized and to get them imported into Some one of his Majesties Colonies or plantations in America against the Several Statutes in Such Case made and provided and this Informant further sheweth unto your Honour That one John Nicoll Commander of a private Vessel of war belonging to this his Majesties port of New York, going out on a Cruize ag^t. his Majesties Enemies did on the High Seas within the Jurisdiction of this Court on the day of now last past meet with the said Daniel Southers, in the s^d. Schooner with the said Goods and Commodities on Board the same hovering upon the Coasts of this Government and thereupon he the said John Nicol took & sent the s^d. Schooner into this Port of New York which s^d. Schooner with the Goods and Commodities on Board the same imported into this Colony as af^d. against the form of the Several Statutes in Such Case made and provided being found by this Informant the s^d. Archibald Kennedy, he the s^d. Archibald Kennedy the Informant on the day of this present month of September in the port of New York on the High Sea and within the Jurisdiction of this Court did Seize. Wherefore this Informant humbly conceives that the s^d. Schooner or Vessel called the Joseph and the said Goods and Commodities on Board the same shipped in Holland in Europe as af^d. are become forfeited and Lost, one third part to his Majesty one third part to the Honourable James DeLancey Esqr. Lieutt. Governour and Commander in Chief in and over the province of New York and Territories thereon depending in America and the other third part thereof to this Informant; Who as well for

and in Behalf of our s^d. Sovereign Lord King George the Second, and the s^d. Lieut Gov^r. and Commander in Chief as for himself prays the Advice of this Honourable Court in the premises and the due process of the Law against the s^d. Schooner called the Joseph and the Goods and Commodities on Board the same and Sentence and Condemnation against the same one third part thereof to his Majesty & one third part thereof to the Honourable James DeLancey Esq^r. Lieut. Governour and Commander in Chief of the Province of New York and Territories thereon depending in America, and the other third part thereof to the s^d. Archibald Kennedy this Informant who now Sueth for the Same according to the form and Effect of the Several Statutes in Such Case made and provided.

And the Lybellant shall ever pray &c

Arch^d. Kennedy

W^m. Kempe }
advocate General }

NOTE G

LIBEL IN PRIZE

COMMON FORM

PROVINCE OF	}	To the Honourable Lewis Morris Esq ^r .
NEW YORK COURT		Commissary of the Court of Vice Ad-
OF VICE ADMIRALTY		miralty for the Province of New York.

The Lybel of John Nicoll Commander of the private Ship or Vessel of War called the Oliver Cromwell in behalf of himself and the Owners & Company of the said Ship in all humble manner sheweth unto your honour that his Most Sacred Majesty George the Second by the Grace of God of Great Brittain France & Ireland King Defender of the Faith &c. By his Commission under the Seal of this Honourable Court Bearing Date the Twenty first Day of July, one thousand seven hundred & fifty seven reciting as therein is recited did Grant

Commission to & Licence & authorize the said John Nicoll to set forth in warlike manner the said Ship or Vessel Called the Oliver Cromwell under the Command of the said John Nicoll therewith by force of Arms to apprehend seize & Take the Ships Vessels & Goods belonging to France or the Vassals & Subjects of the French King or others Inhabiting within any of his Countries Territories & Dominions and Such other Ships Vessels & Goods as were or should be Liable to Confiscation pursuant to the respective Treaties between his Majesty and other princes States & potentates & to bring the same to such port as should be most convenient in order to have them Legally adjudged in his Majesty's high Court of Admiralty of England or before the Judge of such other Admiralty Court as should be Lawfully authorized within the Dominions which being condemned it should & might be Lawful for the said John Nicoll to sell and Dispose of such Ships Vessels & Goods so adjudged & Condemned in such Sort & Manner as by the Course of Admiralty hath been accustomed as by the same Commission may appear and the said Lybellant doth farther shew that he with her Company & Crew on Board of the said Ship Oliver Cromwell in pursuance of his said Commission on or about the Twenty second Day of September last on the High Seas & within the Jurisdiction of this Court in the Latitude of Twenty two Degrees & thirty five minutes north & Longitude, twenty three Degrees & forty six minutes West from London did meet with set upon attack & take a Certain French Ship or Vessel Called Le Jazon of the Burden of about Three hundred Tons Commanded by Jacque Bertrand a Subject of the French King Commissioned by Letters of Marque from the French King navigated with thirty men the said Captain & other Officers included & mounted with Fourteen Carriage Guns & four Swivels bound from Quebeck to Cape Francois & being Laden with Lumber & other Goods wares & Merchandizes all belonging to & being the Property of the Subjects of the French King Enemies of our Sovereign Lord King George the Second¹ and the said Lybellant further

¹ and having also on Board one Simeon Hopkins a British subject as a Hostage for the payment of one thousand pounds Sterling for

shews unto your Honour that the said French Ship or Vessel with her Boat Guns Ammunition Tackle apparel furniture & appurtenances with all the Goods Wares & Merchandizes aforesaid and the said Hostage he the said Lybellant hath sent unto this his Majesty's Port of New York in order to have the same legally condemned in his Majesty's Court of Vice Admiralty there whereupon the said Lybellant prays that the said Ship or Vessel called the Le Jazon with her Guns Tackle apparel furniture ammunition and the reasonable salvage out of the said one thousand pounds sterling & Lading may by the Sentence & Decree of this Honourable Court be adjudged & Condemned as Lawful prize to the use of the said Lybellant & the Owners & Company of the said Ship Oliver Cromwell according to the Common Right of Nations & the Law of Arms in such Case used &c the Statute in such Case made and provided &c

Wil Livingston
Proctor for the Lybellt.

NOTE H

AFFIDAVIT OF DELIVERY OF CAPTURED SHIPS' PAPERS; THE COMMON FORM IN PRIZE.

John Hodge Commander of
the Private Sloop of War
the Enterprize in behalf of
himself & the Owners &
Company of the said Sloop

vs

The Schooner the Catharine
her Lading &c.

PROVINCE OF NEW YORK COURT
OF VICE ADMIRALTY.

NEW YORK, SS. Slade Belben of full age being duly sworn deposeth and saith that the Papers and Writings herewith brought and delivered to the Deputy Register of the Court of Vice Admiralty for the Province of New York are brought

which the Sloop Molly before that Time taken by the said Jacque Bertrand had been Ransomed by Th^s. Hinman the Captain of said Sloop Molly

& delivered as they were found on board the Schooner the Catharine at the Time of the Capture thereof without any Fraud Addition Subduction or Embezzlement to the best of this Deponent's knowledge that the other material, Papers & Writings were by the Captain of the said Schooner sent on Shore with two French Men the Evening before the Capture thereof as this Deponent understood from several of the Crew belonging to the said Schooner and verily believed to be true and further the Deponent saith not

Slade Belben.

Sworn the 28th Day of
June 1762 before me,

John McKesson.

NOTE I

ANSWER IN PRIZE, SETTING UP THAT THE *RES* WAS
A RECAPTURED BRITISH VESSEL.

PROVINCE OF NEW YORK
COURT OF VICE ADMIRALTY

TO THE HONOURABLE LEWIS MOR-
RIS Esqr. Commissary and Judge
of the Court of Vice Admiralty
of the Province of New York.

The Answer and Claim of Malcolm Campbell of the City of New York Merchant for and on Behalf of William Blair of the City of Philadelphia Reclaimant of the Ship the Sea Horse or Le Cheval Marine her Boat Tackle Apparel and Furniture To the Lybell of Robert Dale Commander of the private Snow of Warr called the Royal Hester on Behalf of himself and the owners and Company of the said private Vessel of Warr The said Malcolm Campbell for and on Behalf of the said William Blair former Owner of the said Ship the Sea Horse or Le Cheval Marine saving & reserving to himself (and to him for whom he doth hereby claim) all and all Manner of Benefit and Advantage of Exception to the manifolds Untruths Incertainties Insufficiencies and Imperfections in the said Lybell contained for Answer thereunto or to so much thereof as the said Malcolm Campbell is advised

is any Way material for him the said Reclaimant to make Answer unto he answereth and saith that the said William Blair of the City of Philadelphia a Subject of His Majesty King George the Second on the Twentieth Day of December In the Year of our Lord One Thousand Seven Hundred and Fifty Six was Owner of the said Ship The Sea Horse or Le Cheval Marine with her Boat Tackle Apparel and Furniture then lying in the Port of New York That the said Ship Le Cheval Marine in or about the month of January. In the year aforesaid sailed from the Port of New York under the Command of one Francis Blair a subject of his Majesty King George the Second bound for Newry in Ireland and from thence to one of the Cape de Verde Islands. That the said Ship The Sea Horse or Le Cheval Marine with her Boat Tackel Apparel and Furniture being upon the high Seas in her Passage from Newry to one of the Cape de Verde Islands in the voyage aforesaid was met with seized and taken by the Subjects of the French King Enemies of our Sovereign Lord King George the Second And that afterwards The said Ship The Sea Horse or Le Cheval Marine with her Boat Tackell Apparell and Furniture was met with attacked and taken from and Out of the Possession of the Enemies of our said Lord the King by the said Robert Dale Commander of the said private vessell of Warr called the Royal Hester about the Time and in the Manner for that Purpose in the Lybellants said Lybell set forth and mentioned And the said Malcolm Campbell for and on Behalf of the said William Blair the former Owner of the said Ship The Sea Horse or Le Cheval Marine doth affirm his Property in the said Ship her Boat Tackell Apparell and Furniture in Manner as herein above set forth And the said Malcolm Campbell for and in Behalf of the said William Blair the Owner of the said Ship The Sea Horse or Le Cheval Marine as above mentioned doth admit that Salvage is due for the Recapture of the said Ship The Sea Horse or Le Cheval Marine and Boat Tackell Apparell and Furniture according to the time she continued in the Possession of the Enemies of our Said Lord the King before the Time of the Recapture aforesaid But for as much as the said Ship The Sea Horse or Le Cheval Marine Boat Tackel

Apparel and Furniture did formerly belong unto and was the Property of the said William Blair a Subject of the Crown of Great Brittain he the said Malcolm Campbell in Behalf of the said William Blair the said Owner Humbly prays to be admitted Claimant of the said Ship The Sea Horse of Le Cheval Marine Boat Tackell Apparel and Furniture And prays that the same may be sold and that the Monies arising by the Sale thereof be distributed between the said Malcolm Campbell for the use of the said William Blair the former Owner of the said Ship The Sea Horse or Le Cheval Marine and the Recaptor according to Law Without that that there is any other Matter Cause or Thing in the said Lybell contained material or necessary for the said Reclaimant to make Answer unto and not herein and hereby Sufficiently Answered unto Confessed and avoided traversed or denied is true All which Matters and Things herein before contained The said Malcolm Campbell for and on Behalf of the said William Blair The former Owner is ready to Aver and prove as this Honourable Court shall award.

Whitehead Hicks, proctor.
& Advocate for Claimant.

NOTE J

LIBEL OF INFORMATION UNDER NAVIGATION ACTS (Common Form)

PROVINCE OF NEW YORK
COURT OF VICE ADMIRALTY

To the Honble Lewis Morris Esqr.
Commissary and Judge of the
Court of Vice Admiralty for the
Province of New York in Amer-
ica.

ALEXANDER COLDEN Surveyor and Searcher of his Majesty's Customs for the port of New York, who as well for our Sovereign Lord George the Second by the Grace of God of Great Britain France and Ireland King Defender of the Faith &c and the Honble Cadwallader Colden Esqr. President of his Majesty's Council and Commander in Chief in

and over the province of New York and the Territories depending thereon in America, as for himself in this port prosecutes, comes here into this Court of Vice Admiralty this Twelfth Day of November in the thirty fourth year of his said Majesty's Reign in his own proper person, and as well for our said Lord the King and the Honble Cadwallader Colden Esqr. president and commander in Chief as aforesaid as for himself gives this Court here to understand and be informed, That on or about the third Day of November in the thirty fourth year of the Reign of our Sovereign Lord George the Second now King of Great Britain &c Fifty Chaldron of Coal of the Growth and Production of Europe was imported by Water into this Province of New York (being a Colony and plantation to his said Majesty belonging and in his Possession in America) in a certain Snow or Vessel called the Dispatch, whereof George Nixon of the City of New York Mariner was Master, the same Fifty Chaldron of Coal or any part thereof, not having been bona Fide and without Fraud laden and shipped in England Wales or the Town of Berwick upon Tweed, or any part of Great Britain and carried directly thence to the said Colony of New York, and from no other place or places whatsoever against the Form of the Statute in such Case made and provided, Which said Snow or Vessel and Coal so as aforesaid informed against, being by him the said Alexander Colden afterwards that is to say on the said third Day of November in the year af^d. at the City of New York in the Dock Ward of the same City and within the jurisdiction of this Court found, He the said Alexander Colden afterwards that is to say on the said third Day of November in the year afores^d. at the City and Ward aforesaid, and within the Jurisdiction aforesaid did arrest and seize the same as forfeited for the Use of our said Lord the King the said Cadwallader Colden the president and Commander in Chief aforesaid and himself the said Alexander Colden, Wherefore the said Alexander Colden who as well for our said Lord the King and the said Cadwallader Colden the president and Commander in Chief aforesaid as for himself in this Port prosecutes, prays the advise of the Court here in the Premises, and that the Snow or Vessel aforesaid with all

her Guns Tackle Furniture Ammunition and Apparel, and also the Coal aforesaid, and everything else on board the same Vessel liable to Confiscation may remain forfeited and be condemned by Decree and Sentence of this Honble Court, And that he the said Alexander may have one third part thereof according to the Form of the Statute in such Case made and provided.

Alex^r. Colden.

NOTE K

LIBEL OF INFORMATION N. Y. CUSTOMS' ACTS. COMMON FORM.

State of New York

In the Court of Admiralty

To the Honorable Lewis Graham, Esquire,
Judge of the Court of Admiralty of the
State of New York.

John Lamb Esquire, Collector of the Customs for the Port of New York, who as well for the People of the State of New York as for himself in this Part prosecutes, comes here into this honorable Court this Nineteenth Day of July in the Year of our Lord one Thousand seven Hundred and Eighty five in his own proper Person, and as well for the said People of the State of New York as for himself gives the Court here to understand and be informed, that between the fifteenth Day of July Instant and the Day of exhibiting this Information within the Jurisdiction of this Honorable Court, he did seize for the Use of the said People of the State of New York, and himself, and as forfeited did arrest one Trunk of Merchandize, for that, to wit, that between the Days and Times last aforesaid, the said Trunk of Merchandize, was imported by Water into this State of New York in his most Christian Majesty's Packet Le Courier L'Amerique, Captain Forneau, Commander, or in some other Vessel or Vessels to this Informant unknown, and was removed out of the said Vessel or Vessels, and landed and put on Shore at the City of New York, without the Warrant, Sufferance, Permission, or Leave first had or

obtained from the Collector, or any Officer or Officers for collecting or managing the Customs of the said Port of New York, and without the Presence of any of the Officers of the said Customs and before the Delivery to the Collector of the said Customs or to any other Person or Persons by him authorized or appointed to receive the same, of a true and perfect Inventory or Invoice of the said Trunk of Merchandize, & without any Report made of the Plan or Places where the said Goods and Merchandize or any Part thereof were laden and before any Report or Entry was made of the said Goods and Merchandize to the Collector of the said Customs, and before the Duties on the said Trunk of Merchandize had been paid, or the Payment thereof secured, against the Form of the Act or Statute of the People of the State of New York, Entitled, "An Act imposing Duties on certain Goods, Wares, "and Merchandize imported into this State," passed the 18th. November 1784, and against the Form of the several other Acts or Statutes in such Case made and provided. Whereof the said John Lamb as well for the said People of the State of New York, as for himself prays the Advice of this Court in the Premises, and the due Process of the Law, and that the said Trunk of Merchandize may remain forfeited, and be condemned by Decree and Sentence of this Honorable Court, pursuant to the Statutes in such Case made, and provided, and that he the said John Lamb may have one half Part thereof, and the other half Part thereof to the People of the State of New York as aforesaid, according to the Form of the Acts or Statutes in such Case made and provided and your Libellant shall ever pray &c.

Edward Dunscomb

Proctor for Libellant

NOTE L

ANSWER UNDER N. Y. CUSTOMS ACTS; SETTING UP
BARRATRY OF MASTER.

(This case was either settled, or abandoned by Libellant.)

NEW YORK COURT OF } The answer of Joseph Brown of New-
ADMIRALTY } ark in the State of New Jersey Mer-
chants to the Libel of John Lamb
Esquire Collector of the Customs of the Port of New York
who as well for the People of the State of New York in that
behalf prosecutes Libellant of four hundred bushells of salt;
One Cask of Sugar, two Hogsheads of Spirits; Seventy yards
of Sheeting, six barrels of Superfine Flour, seven pieces of
Callico, One piece of Buckram, one piece of Sheeting, one Cask
of Powder, one piece of Corduroy, one Keg of Indigo, one
Canister of Powder, and twelve Yards of Shalloon, and the
claim of the said Joseph Brown, to three hundred and fifty
bushells of Salt, Water Measures, parcel of the said Four
hundred bushells; two Hogsheads of Jamaica Spirits; one
Cask or Hogshead of Sugar, six barrels of flour, one Keg of
Indigo, and two packages of Dry Goods, which said packages
or one of them contained the said Seventy yards of Sheeting
the said Seven piece of Callico the said one piece of Buckram,
one piece of Sheeting, one piece of Corduroy, and one Keg
of Indigo.

The said Joseph Brown, saving and reserving to himself
now and at all times hereafter all and all manner of benefit
and advantage of exception to the manifold untruths incer-
tainties insufficiencies and imperfections in the Libellants said
Libel contained for answer thereunto or unto so much thereof
as is material for him to answer unto he answereth and saith,
that on the twenty eighth Day of November, in the year of
our Lord, One thousand seven hundred and eighty seven he
the said Joseph Brown was possessed of, and did own at
Philadelphia in the State of Pennsylvania three hundred and
fifty bushels of Salt, Water Measure two hogsheads of Jamaica
Spirits, One Hogshead of Sugar, Six barrels of flour, and one
Keg of Indigo; and two packages of Dry Goods; That the said

Joseph Brown being desirous to export the said Articles to Newark, in the State of New Jersey from Philadelphia aforesaid, the said Joseph Brown was informed that a certain Sloop, called the Charming Sally, whereof a certain John Sweethen, was Commander was about to proceed to Blue Point, in the said State of New York; Wherefore he the said Joseph Brown did then and there, to wit, at Philadelphia aforesaid apply to the said John Sweethen, to carry the said articles from Philadelphia aforesaid to Newark, aforesaid: That the said John Sweethen did accordingly consent to, and did lade on board the said Sloop, Charming Sally, the aforesaid articles last mentioned, to be carried to, and landed at the aforesaid Port of New-Ark, to be delivered to the said Joseph Brown, or to his assigns, he or they paying freight for the said Goods, Six pounds Specie—and the said Joseph Brown, further saith that, the said Sloop Charming Sally, as he has heard and believes proceeded in the prosecutions of the Rout aforesaid, and was through the wickedness of the said John Sweethen, carried on Shore near Hampstead Town ship, on the South side of Long Island in the said State of New York, and that the said John Sweethen intending feloniously and piratically to injure cheat and defraud the said Joseph Brown of the said Goods did Land part of them on Long Island aforesaid, without the knowledge contrary to the consent and against the inclinations of the said Joseph Brown, and the said Joseph Brown further saith that the said Joseph Brown was the sole and full freighter of the said Sloop, and that the said John Sweethen Commander as aforesaid did on the High Seas, and within the Jurisdiction of this Court betray the trust reposed in him by the said Joseph Brown, and did turn pirate and did piratically and feloniously run away with the said Sloop and with the said Goods;—and did carry the said Goods to Long Island aforesaid, and hath since fled for the same—Wherefore the said Joseph Brown doth hereby claim the said four hundred bushells of Salt; the said one Cask of Sugar, two hogsheads of Spirits Seventy Yards of Sheeting, six barrels of Superfine Flour, seven Pieces of Callico, One piece of Buckram one piece of Sheeting, one Cask of Powder, one piece of Corduroy, one Keg of Indigo, one

Canister of Powder and twelve Yards of Shalloon, the same articles being those that are mentioned in the Exhibit herewith filed the said Three hundred and fifty bushels of Salt therein mentioned being of the Measure commonly called Water measure, and the said two Packages therein mentioned having been opened and the said quantities of Dry-Goods taken thereout by the said John Sweeten, in pursuance of his piratical and felonious attempt and practices as aforesaid: And the said Joseph Brown, doth aver, and doubts not he shall be able to prove that the said Goods, Wares and Merchandizes in the said Libel mentioned, and the Goods Wares and Merchandizes hereby claimed, and the Goods Wares and Merchandizes in the said Exhibit mentioned are one and the same, and not other nor different. Without that, that any other matter or thing, in the said Libellants said Libell contained material or effectual for the said Joseph Brown, to make answer unto and not herein or hereby well and sufficiently answered unto confessed and avoided traversed or denied is true:—All which matters and things herein before contained the said Joseph Brown is ready to aver maintain and prove as this Honorable Court shall award and humbly prays to be hence dismissed with his Costs and Charges by him in this behalf sustained.

Joseph Brown.

Sworn the fifth day of June 1788

Before me

John McKesson absente }
Judice }

Cock
Proctor & Advocate for Clt.

NOTE M

SUBPOENA TICKET, VICE ADMIRALTY

Sir,

By Virtue of a Writ of Subpena to you and others directed and herewith shewn unto you, You are personally to be and Appear before the Judge and Commissary of the Court of Vice Admiralty of the Province of New York, the Colony of

Connecticut & provinces of East & West New Jersey, immediately after The receipt hereof to take the Oath usually administered to Witnesses And also According to the usage and Course of the Admiralty in like Cases to give your Testimony and say the truth on and Concerning the matters and things mentioned & Contained in Certain Informations in our said Court given and Filed and there depending between his Excellency John Wentworth Esquire Surveyor General of all his Majesty's Woods in North America (who as well for our Lord the King as for himself in this part prosecutes) Informants, William Dean, Willard Dean & William Dean the younger, severally and who without his Majesty's Royal License and Consent for so doing have Cut, felled destroyed and Carried away and Aided & Assisted in Cutting Felling Destroying and Carrying away divers White pine Trees fit for Masts for the Royal Navy of our Lord the King (as is said) And hereof you are not to Fail on pain of One hundred pounds dated the Ninth day of October in the Year of our Lord One thousand Seven hundred and Sixty Nine.

Pr. Cur John McKesson D. Regr.

To Mr.

NOTE N

SUBPOENA STATE ADMIRALTY

NEW YORK COURT ADMIRALTY	}	The People of the State of New York by the Grace of God free and Independent —To all persons Literate whomsoever and particularly Benjamin Bulson
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Henry Rainer John Spragg and Archelaus Doxsee all of Queens County Greeting—We command you the said Person or Persons literate to Summon the said Benjamin Bulson personally to appear before us in our said Court of Admiralty for our said State on friday the twelfth day of August Instant, and to Summon the said Henry Rainer personally to appear before us in our said Court of Admiralty on Monday the fifteenth day of August Instant, respectively at eight of the Clock in the forenoon of the said Days above mentioned,

and to Summon John Spragg and Archelaus Doxsee personally to appear in our said Court, the said John Spragg to appear on the seventeenth, and the said Archelaus Doxsee on the nineteenth days of August Instant at eight of the Clock in the forenoon of the said Days, respectively to testify and give evidence on examinations on Interrogatories of such things as each of them respectively knoweth and shall be interrogated of him, in two certain causes now depending in our said Court, the one between Robert Thompson Libellant of the Cargo and Lading of the ship Masborough Whereof John Murray John Reade and Isaac Gouverneur jun^r. are Claimants, and the other between Robert Thompson Libellant of the said ship Masborough her Tackle and apparel and George Danser Claimant of the said ship—And each of them the said Benjamin Bulson Henry Rainor John Spragg and Archelaus Doxsee are hereby strictly enjoined and Comanded personally to be and appear in our said Court before us at the Times above as to each of them respectively mentioned, to be examined by the Register of our said Court on Interrogatories in the said Causes as above mentioned, under the penalty of five pounds each—Witness the Honorable Lewis Graham Esquire Judge of our said Court, and the Seal thereof, the Eighth day of August in the Tenth year of our Independence.

Lewis, Proctor

Pr. Cur McKesson

I the Subscriber did on Thursday the eleventh day of August Instant Summon the within named Benjamin Bulson and on the same day I did duly Summon Henry Rainor and on the same Eleventh day of August Instant I did also Summon the within named John Spragge to attend as Witnesses and be examined agreeable to the directions of the within precept—And the within named Archelaus Doxsee is not Summoned by me. All which I do most humbly certify to the Court within mentioned—Dated this thirteenth day of August 1785

Robert Thompson

NOTE O

AFFIDAVIT FOR SALE OF *RES PENDENTE LITE*.

(The reasons for sale are fully set out. Affidavits of this nature are common, but usually state no more than that the ship "is leaking" or the goods "perishable.")

In Cur. Adm.

John Lamb qui tam &c

1 Box of Tea &c &c

} Henry Bicker of the City of New
York Esquire being duly Sworn

deposeth and Saith that the said Box of Tea was seized and taken by him by Reason of its being landed open on Shore in this State by some Person or Persons unknown contrary to the Laws thereof—that the Tea contained in the said Box is of the first Quality and from the present Scarcity of Teas in this State, the said Quality of Tea bears a high and an advanced Price—that however he has Reason to believe that, from the Arrivals already from the East Indies with Teas in the Neighbouring States, and from the Expectancy of others, the Tea contained in the said Box, unless immediately sold will be very much injured in Value—by Reason of the Reduction of the Price—and lastly that he is well informed that if the said Tea contained in the said Box is retained in Store untill a Decree can be had in this Court against it, that the same will be injured by wasting in Quantity and Flavor

Henry Bicker

Sworn this 24th Day of }
September 1788 }
Before Me }

Lewis Graham.

NOTE P

STIPULATION BY AGENTS FOR SALE OF *RES*:
 THE COMMON FORM OF ANY AGREEMENT WITH THE
 COURT, WHETHER ENTERED ON THE MINUTES,
 OR CONTAINED IN A WRITING FILED
 WITH THE REGISTER.

James Creighton & Edward
 Bishop in behalf of them-
 selves and their respective
 owners & crews

agt.

The Schooner Solida & Lad-
 ing and one negro fellow
 named Quash

NEW YORK COURT OF VICE
 ADMIRALTY

Jacobus Van Zandt and Samuel Stillwell both of the City of New York merchants jointly and severally stipulate to the Register of this Court in behalf of James Creighton Commander of the private Sloop of War called the Charming Betsey one of the Libellants in the above Cause in the sum of four hundred pounds lawful money of New York on Condition that the Libellant James Creighton or his Agent or Agents shall & do bring into this Court the Account of the sales of the said Schooner Solida & Lading and the said negro fellow named Quash, and one moiety of the monies arising from and by the said sales to abide the Order of this Court

when the Court shall direct the same.

Taken and acknowledged
 the 21st day of April 1762

Before me

Samuel Stilwell
 Jacobus Van Zandt

John McKesson ab. jud.

NOTE Q

BILLS OF COSTS, IN UNCONTESTED INFORMATIONS
VICE ADMIRALTY & STATE ADMIRALTY.

FRANCIS TINSLEY, Esquire qui tam &c Informant	}	COSTS and Fees due to the Judge Register and Marshall
vs THE BOAT HARLEQUIN &c and Nineteen Chests of Tea &c		

JUDGES FEES

Application Fee	£	6.0	
Seal to the Writ of Appraisement		6.0	
Sentence fee at 3-½ Per Cent on £1213.6.3		42.9.1	
Seal to the duplicate of the Record		1.9.0	44.10.1

REGISTERS FEES, NOVEMBER 30th 1771.

Entring Motion for reading and filing the Information	3.0
Reading and filing inde	4.4
Entring Motion for first Proclamation and rule inde	3.0
Making and Entring Proclamation	1.6
Entring Motion for Default	3.0
Entring default	1.6
Entring motion for Monition and Notice and rule inde	3.0
Motion and rule for Writ of Appraisement	3.0
Drawing Notice fo. 3@ ¼ .. ¼ fair Copy @6 .. ¼ ..	6.0
Drawing Writ of Appraisement fo. 3@ ¼	4.6
Fair Copy sealed	1.6

DECEMBER 4th

Entring Motion for Second Proclamation	3.0
Making and Entring Inde	1.6
Entring Motion for Second default	3.0
Entring default	1.6

DECEMBER 9th

Entering Motion for Third Proclamation	3.0	
Making and Entering inde	1.6	
Entering Marshalls return of Monition &c	1.6	
Entering Motion for Third default 3/		
Entering default $\frac{1}{6}$	4.6	
Entering Return of Appraisors	3.0	
Filing Writ and return at 1/ Each	2.0	
Entering Motion for last Proclamation	3.0	
Making and Entering Proclamation	1.6	
Entering Motion for a decree	3.0	
Entering decree in the Minutes	10.0	
Drawing Record	1.10.0	
Duplicate of purchasor Sealed	1.10.0	
Filing Marshalls acct. Sales $\frac{1}{6}$ Entering		
same on minutes $\frac{4}{6}$	6.0	7. 2.4

MARSHALLS FEES

Making four Proclamations at $\frac{1}{6}$	6.0	
Attending the Appraisors	15.0	
Sentence fee	15.0	
four Notice fees	4.0	
Commissions for Sale on £1213.6.3	60.13.3	62.13.3

APPRAISORS FEES

Drawing their Return & signing the same	0.18.6	
To their Trouble in this Instance	4.10.0	5. 8.6

£119.14.2

New York January the 3^d 1772 I tax the preceeding Bills together at the sum of One hundred & nineteen pounds fourteen shillings & two pence Current money of New York.

R. Morris.

JOHN LAMB qui tam &c Informant

vs

Six Hogsheads of Porter
and Eight Chests of Bohea
Tea

COSTS due to James M. Hughes
Esquire Proctor for the Informant.

JANUARY 13th 1787.

RETAINING FEE	£ 1.10.0
Drawing the Information	1.10.0
Copy to file	10.0

JANUARY 25

Motion that Libel or information be read	10.0
Motion for the first proclamation	10.0
Motion for the first Default	10.0
Motion for Monitions and notices 10/ attending	10.0

JANUARY 27th

Motion for second Proclamation	10.0
Motion for second default 10/	10.0
Attending Court	10.0

FEBRUARY 7th

Motion for third proclamation	10.0
Motion for third default	10.0
Attending Court	10.0

FEBRUARY 8th

Motion for last proclamation to shew Cause	10.0	
Motion for last Default	10.0	
Motion for Decree and order for sale	10.0	
Attending Court	10.0	
Dr. Costs and Copy to be taxed	6.0	
Attending Judge on Taxing Costs	10.0	
Paid Judge for taxing Costs	6.0	12. 2.0

Judges fees as per Bill	7.2. 6	
Registers fees as per Bill	7.3.10	
Marshalls fees as per Bill	2.8. 0	16.14.4
		£ 28.16.4

I Tax the Above Bills at the Sum of Twenty eight Pounds
Sixteen Shillings and four pence.

Lewis Graham

New York March 10th 1787.

NOTE R

FINAL DECREE, AS EXTRACTED FROM THE MINUTES,
AND CERTIFIED IN COMMON FORM

PROVINCE OF }
NEW YORK } ss Att a Court of Vice Admiralty held for the
[SEAL] said Province at the City of New York on
Wednesday the First Day of November in
the Thirty second Year of the Reign of our
Sovereign Lord George the Second by the
Grace of God of Great Britain France and
Ireland King Defender of the Faith &c
Annoq. Domini 1758. Before the Hon^{ble}.
Lewis Morris Esqr. Commissary &c of the
said Court.

Captain Mark Vallentine on }
Behalf of himself and the }
Owners and Company of the }
Snow Genl. Abercrombie }
agst. }
The French Ship Le Ami- }
able Marie her Boat Guns }
Tackle Apparel Furniture }
and Lading }

BE IT REMEMBERED that on a
Day before (to witt) on Monday
the Thirtieth Day of October in the
Thirty second Year of the Reign
our Sovereign Lord George the
Second Captain Mark Vallentine
on Behalf of himself and the Own-
ers and Company of the Snow
Genl. Abercrombie Exhibitted his
Lybell in the said Court of Admiralty Before the Honourable
Lewis Morris Esqr. Commissary and Judge of the said Court
against the French Ship Le Amiable Marie her Boat Guns

Tackle Apparel Furniture and Lading, Therein reciting His Majesty's Commission to him the said Mark Vallentine as Commander of the said Snow Genl. Abercrombie as a Private Vessell of War, And shewing that in Pursuance of his said Commission being in the said Snow with his Crew on board the same on or about the Twenty sixth day of September last past being on the high seas and within the Jurisdiction of this Court about five or six Degrees to the Northward of Cape Samana he did meet Sett upon and take a certain Ship called the Amiable Marie of the Burthen of two hundred Tons Com-manded by one Simon Lonnirgan having on Board Blank and other Goods Wares and Merchandizes, all belonging to and being the Effects Goods and Chattles of the French King his Vassalls or Subjects Enemies of our said Sovereign Lord George the Second, which said Ship so taken as aforesaid wth. her Cargo aforesaid the said Mark Vallentine hath brought into this His Majesty's Port of New York in order to have the same legally Condemned by the Sentence and Decree of this Honourable Court And Praying the said Ship her Boat Guns Tackle Apparel and Furniture, with the Goods Wares and Merchandizes, and every thing else on Board the same belonging to The French King his Vassalls or subjects may by the Sentence and Adjudication of this Honourable Court be Condemned as lawfull Prize to the use of the said Mark Vallentine and the Owners and Company of the said Snow according to the common Right of Nations, and the Law of Arms in such case used, and the Statute in such Case lately made and Provided which Lybell being read in Court upon Motion of Mr. Rich^d. Morris Proctor for the Lybellant Procla-mation was three Times made at three several Courts (to witt) on Monday the Thirtieth Tuesday the Thirty first Days of October aforesaid, and Wednesday the First Day of Novem-ber aforesaid and proper Monitions and Notices being served and affixed up at the usual Publick Place for any Person to appear that had ought to say why the said French Ship Le Amiable Marie with her Boat Guns Tackle Apparel Furniture and Lading should not be Condemned according to the Prayer of the Lybell aforesaid and no Person appearing to Claim or

defend the same the Court ordered the several Defaults to be Entred. And afterwards (to witt) on the same first Day of Novembr. aforesaid the said Proctor for the Lybellant prayed the preparatory Examinations taken in this Cause might be made Publick, and that he might then proceed to the Hearing which was ordered accordingly. And thereupon the said Proctor opened the Lybell & Proceedings, and the preparatory Examinations of Pierre Florance late second Captain of Francis Geze Doctor and of Raymond La Beale late Carpenter of the said Ship Le Amiable Marie being read and it appearing thereby that the said Ship Le Amiable Marie & Lading &c was taken by the Lybellant and Company on or about the Day & at or near the Place in the Lybell mentioned, and that the said Ship & Lading &c at the Time of the Caption belonged to Subjects of the French King, Therefore the Court does adjudge Sentence and Decree the said Ship Le Amiable Marie, with her Boat Guns Tackle Apparel Furniture and Lading as lawfull Prize for the Use of the Captors according to the Prayer of the Lybell aforesaid pursuant to the Statute in that Case made &c. Witness the seal of the Court of Vice Admiralty for the Province of New York the First Day of November in the Thirty Secd. Year of His Majesty's Reign Annoq. Domini 1758.

Pr. Silvester, D. Register.

NOTE S

NOTICE OF APPEAL.

(The original is in Mr. Nicoll's handwriting.)

Judah Meers Claimt. of the
Schooner Gull In behalf of
Philip Wagg

ads.

Viner Leycraft and al.

NEW YORK COURT OF
ADMIRALTY.

I hereby appeal in behalf of Philip Wagg from the Sentence given in this Court against the Schooner Gull and her Lading to the Commissioners appointed under the Great Seal of Great

Brittain for receiving hearing & Determining of Appeals in Causes of Prizes, & do pray that the appostles be Immediately delivered me for the prosecution of the said Appeal.

Jud. Mears.

B. Nicoll Proctor
for the Appellent.

NOTE T

DECREE OF AFFIRMANCE BY THE PRIZE COMMISSIONERS.

George the Third by the grace of God of Great Britain, France and Ireland King Defender of the Faith &c. To all and singular persons of whatsoever Dignity State Degree pre-eminence they be to whom these presents Letters Testimonial shall come Greeting. We do by the tenor of these presents make known and signify unto you that upon examining the Records of our High Court of Delegates faithfully kept by our beloved Godfrey Lee Farrant, Esqr the principal Register of our said court, we do find a certain Interlocutory decree in writing made and Interposed in our afores^d Court of the Tenor and in the words following to wit:

Friday the 19th day of December in the year of our Lord One thousand seven hundred and sixty before the Right Hon^{ble} John, Earl Granville President of his Majesty's most Hon^{ble} Privy Council; George, Earl of Cholmondeley, Thomas, Earl of Kinnoul, Chancellor of the Dutchy of Lancaster, Hugh Viscount Falmouth, John, Lord Berkley of Stratton, Samuel, Lord Sandys, William, Lord Mansfield, Lord Chief Justice of His Majesty's Court of King's bench, Robert Nugent, Esqr, Wellbore Ellis, Esqr (Commissioners among others of His Majesty's Most Hon^{ble} Privy Council for the receiving, hearing and determining of all Causes of Appeal as to prizes) in the privy council Chamber at Whitehall in the presence of Nathaniel Bishop notary publick deputy Register of said Court.

San Joseph.

Antonio de la Rosa Mr.

A Business of Appeal and Complaint of Nullity promoted by Rich^d Sharpe and Mathew Clarkson of the City of New York Merchants against our Sovereign Lord the King by William Kempe his Majesty's Advocate General for the province of New York

For sentence on the 2d Assignment and Information.

Farrer

Tyndall

Which day their Lordships declared that it appearing the Privateer had set the whole Crew on Shore, and not proceeded to adjudication; pronounced therefore that the capt of the privateer had broke his Instructions; and therefore by their final decree or sentence Affirmed the Sentence of the Judge below, and ordered the penalty of the Bond when recovered, to be applied for use of the Injured Party.

All and singular which premises as they have been drawn up and passed in our aforesaid Court, so we have thought meet that the same should be Exemplified to you, and we do Attest that the same do agree, having been faithfully Compared with their originals remaining of Record in the Registry of our Court aforesaid. In witness whereof we have caused the seal of our said Court to be affixed to these presents. Given at London in our aforesaid Court the twenty fourth day of January in the year of Our Lord 1761, and of our Reign the first.

Godfrey Lee Farrant Register of
his Majesty's High Court of
Appeals for Prizes.

NOTE U

LETTER OF MARQUE

[SEAL] G E O R G E The Third, By the Grace of GOD, King of Great Britain, France and Ireland, Defender of the Faith &c. To all People to whom these Presents shall come: Greeting. WHEREAS WE, by our Declaration of the Seventeenth

Day of May, in the Year of Our Lord One Thousand Seven Hundred and Fifty Six, for the Reasons therein contained, Have Declared War against France. And Whereas Our Trusty and Well-beloved James Delancy Esqr. our Lieutenant Governor & Commander in Chief in & Over Our Province of New York, and the Territories depending thereon in America, having thought John Williams fitly qualified, who hath equipped, furnished, and victualled, a Sloop called the Orleans of the Burthen of about Forty Tons, whereof he the said John Williams is Commander, by Warrant under the Great Seal of Our Province of New York, bearing Date the Sixteenth Day of June in the Year of Our Lord One Thousand Seven Hundred and Sixty. To Lewis Morris Esq; Commissary and Judge of Our Courts of Vice-Admiralty for Our said Province of New York, directed, pursuant to the Power and Authority in him vested; Did Direct and Require him the said Lewis Morris to grant unto the said John Williams a Commission for the Apprehending, Seizing, and Taking the Ships, Vessels, and Goods belonging to France, or the Vassals and Subjects of the French King, or others inhabiting within any of his Countries, Territories, and Dominions; and such other Ships, Vessels, and Goods, as are or shall be liable to Confiscation, pursuant to the respective Treaties between us and other Princes, States, and Potentates, and to bring the same to Judgment in Our High Court of Admiralty of England, or such other Court of Admiralty as shall be lawfully authorized in that Behalf, for Proceedings and Adjudication, and Condemnation to be thereupon had, according to the Course of Admiralty, and Laws of Nations; and with such Clauses to be therein inserted, and in such Manner, as by the said Warrant more at large appeareth. And Whereas He the said John Williams hath given sufficient Bail, with Sureties to Us, in Our said Court of Vice-Admiralty, according to the Effect and Form set down in Our Instructions, made the Fifth Day of June, in the Year of Our Lord One Thousand Seven Hundred and Fifty Six. Know ye therefore, That We Do, by these Presents, grant Commission to, And Do License and Authorize the said John Williams to set forth in warlike Manner, the

said Sloop called the Orleans under his own Command, and therewith, by Force of Arms, to Apprehend, Seize, and Take the Ships, Vessels, and Goods belonging to France, or the Vassals and Subjects of the French King, or others inhabiting within any of his Countries, Territories, and Dominions, and such other Ships, Vessels, and Goods, as are or shall be liable to Confiscation, pursuant to the respective Treaties between Us and other Princes, States and Potentates; and to bring the same to such Port as shall be most convenient, in order to have them legally adjudged in Our said High Court of Admiralty of England, or before the Judges of such other Admiralty Court as shall be lawfully authorized within our Dominions: Which being condemned, it shall and may be lawful for the said John Williams to sell and dispose of such Ships, Vessels, and Goods so adjudged and condemned, in such Sort and Manner as by the Course of Admiralty hath been accustomed, except in such Cases where it is otherwise directed by Our said Instructions. Provided always, That the said John Williams keep an exact Journal of his Proceedings, and therein particularly take Notice of all Prizes which shall be taken by him, the Nature of such Prizes, the Times and Places of their being taken, and the Value of them, as near as he can judge. As also of the Station, Motion, and Strength of the Enemy, as well as he or his Mariners can discover by the best Intelligence he can get; and also of whatsoever else shall occur unto him, or any of his Officers or Mariners, or be discovered or declared unto him or them, or found out by Examination or Conference with any Mariners or Passengers of or in any of the Ships or Vessels taken; or by any other Person or Persons, or by any other Ways and Means whatsoever, touching or concerning the Designs of the Enemy, or any of their Fleets, Vessels, or Parties, and of their Stations, Ports, and Places, and of their Intents therein, and of what Merchant-Ships or Vessels of the Enemy, bound out or home, or to any other Place, as he or his Officers or Mariners shall hear of; and of what else material in those Cases may arrive to his or their knowledge: Of all which he shall, from Time to Time, as he shall or may have Opportunity, transmit an Account to Our

High Admiral of Great Britain, for the Time being, or the Commissioners for executing the Office of our High Admiral aforesaid, for the Time being, or their Secretary; and to keep a Correspondence with him or them, by all Opportunities that shall present. And further Provided, That nothing be done by the said John Williams or any of his Officers, Mariners and Company, contrary to the true Meaning of Our aforesaid Instructions; but that the said Instructions shall be by them, and each and every of them, as far as they or any of them are therein concerned, in all Particulars, well and duly performed and observed. And We Pray and Desire all Kings, Princes, Potentates, States, and Republics, being our Friends and Allies, and all others to whom it shall appertain, to give the said John Williams all Aid, Assistance, and Succour, in their Ports, with his said Sloop Company, and Prizes, without doing, or suffering to be done to him, any Wrong, Trouble, or Hindrance, We Offering to Do the like, when we shall be by them thereunto desired. And We Will and Require all Our Officers whatsoever, to give him Succour and Assistance as Occasion shall require. In Testimony whereof We have caused the Seal of Our Court of Vice Admiralty, of Our Province of New York, to be hereunto affixed. Witness Lewis Morris Esq; Our Commissary and Judge of Our said Court, the Seventeenth Day of June in the Year of Our Lord One Thousand Seven Hundred and Sixty and in the Thirty Third Year of our Reign.

Lewis Morris.

NOTE V

INVENTORY SHOWING RIG EQUIPMENT & CARGO CAPACITY OF A SMALL TRADING SLOOP OF 1762.

Inventory of the Sloop Prosperous Polly sent into this Port by the Sloop Orleans with her Tackle Apparel Furniture and Lading. Viz^t.

The Hull of the said Sloop with her Mast Boom & Bowspritt
Flying Jib Boome and Topmast
Square Sail yard and Boome

Shrouds, Stays Tyes, Tackels hallyards & Down hallyards,
Tacks & Sheets.

Main Sail, Foresail, Gibb & flying Gibb

Square Sail & Square Topsail

Two Anchors two Cables Two Boyes with their Ropes

A Binnicle & two Compasses

Two half hour Glasses

Two Pumps, Three Speers & Six Pump Boxes & Two Pump
hooks

A Cambooze Two Iron Pots and a Saddle

Four Iron Bound Water Caskes of Sixty Gallons Each

Two Wooden bound D^o. of One hundred Gallons Each

Two Axes, Two hammers, and Chisell and Drawing knife

two Gimletts two Calking Irons one hand Saw

A Hand-line and lead

An Ensign, a Parcell of Old Iron

THE CARGO

61 Hogsheads of Molasses	28 Mill Saws	£50.19 in the
21 Tierces d ^o .	29 Cross Cutt Saws	Hands of Capt.
17 Barrells d ^o .	17 Coopers Addj- es	Williams as pr Receipt
3 hogsheads of Sugar	2 Broad Axes	£50 now in my own Hands in Cash delivered by the Prize
2 Barrells d ^o .		Master M ^r .
2 Hogsheads of Coffee		Splane
3 Bags d ^o .		Hayman Levy.
2 Bags of Cocoa		

New York Augt. 25th 1762

Lambt. Moore Comptroller

Hayman Levy

NOTE W

APPLICATION FOR SECURITY TO MINORITY OWNERS
OF A VESSEL.

(Proceedings of this nature, begun both by majority and minority owners, were comparatively frequent in the Vice Admiralty. Security seems always to have been given.)

The Petition of William Beekman, John Van Zandt, Evert Bogardus, John Beekman, Francis Fresneau & Philip Philipse was Read, Praying that the Briganteen Dolphin (of which the Petitioners are Owners of three fourths parts) may be appraised by the sworn appraisers of this City, and the Petitioners be at Liberty to fitt out the said Briganteen Dolphin on a Cruising Voyage of a private Vessell of warr, on their Own Account & Risque, upon their giving Security to make good to Barent Provoost, John Clarkson & Michael Beazley the Owners of the Remaining one fourth part of the said Briganteen, their said fourth of the present vessell: Whereupon it is Ordered That the sworn appraisers of this City do appraise the said Briganteen Dolphin with her Boat, Tackle, Apparrell, Furniture and Appurtenances, and make their Return to this Court with all Convenient Expedition. And it is further Ordered that the Register prepare and the Marshall serve & affix up proper notices for any person to appear at this Court on Tuesday the 11th day of August instant, if it be a day of Jurisdiction, otherwise the next day of Jurisdiction thence ensuing, to shew Cause, if any they have, why the Prayer of the said Petition shall not be Granted.

(Read in open Court August 8, 1747.)

NOTE X

SURVEY OF AN INJURED VESSEL.

(This was a frequent item of business in the Vice Admiralty but apparently only resorted to in respect of foreign ships, *i.e.*, those not belonging to New York.)

The persons appointed by Warrant, under the seal of this court, to go on board the Ship John Frigate now in this port, & to take a survey, & make an estimate of the damages the said ship sustained in a late intended voyage from Jamaica to London, made their Report to this Court, which is in the Words following, viz^t: In pursuance of the within warrant of survey;

We, the under written, did this morning go on board the Ship John Frigate within mentioned, and having taken a survey thereof, Do find that the Channell Whale on the Lar-board side of the said ship is started above an Inch, that four or five Beams on the Lower Deck from the Main HatchWay forward are Broak, by reason whereof the deck is fallen ab^t Thirteen Inches; That some of the sheathing is defective and the oakham in diverse places is Spewed out: all which we conceive ought to be repaired, and we are of opinion that the said Ship John Frigate ought to have three pair of Standards on the lower deck, & three pair of Standards on the upper deck, and that she be entirely calk'd & hove down, to Inspect into her Bottom. (The pylate having run her on Shoar coming into this port). That she ought to have a new spare foretopmast, a new mizen yard & crotchett yard, a new mainsaile; Mizen Foretopsaille & Forestaysaile, a Best bower anchor & cable, & a small Boat, before she is fitt for the sea. All which is nevertheless humbly submitted; by

Wm Banks
Joseph Latham
John Taveau

J. Browne
Math^w Smith
Rich^d Smith.

(Read and filed in open Court November 2, 1728).

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